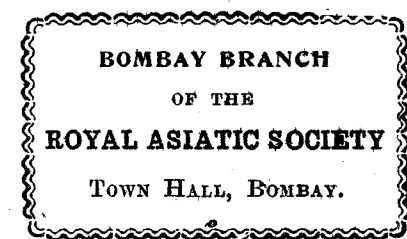




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which powers is the jurisdiction of a justice of the peace over European British subjects. By Act II. of 1869 natives might be appointed justices of the peace, and on what ground, he would ask, was it proposed to restrict their powers as justice of the peace?

*His Honour the Lieutenant-Governor.**—The Council should adhere to the decision which had been come to by the passing of Act II. of 1869, namely, that a justice of the peace must be either a European British subject or a covenanted civil servant. To reopen that question and to limit the powers that might be exercised by any justices who were covenanted civil servants, appeared to his Honour to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light he should be inclined to vote for the motion before the Council.

His Excellency the Commander-in-Chief.†—Said that the native members of the Covenanted Civil Service having been to Europe, having become acquainted with the European feelings, ideas and customs, and having qualified themselves to take their places with the European members of the Civil Service, his Excellency would frankly accept them as real members of the Covenanted Civil Service, and allow them to exercise all the functions which the European members exercised.

His Excellency the President.‡—Said that his vote would be given in conformity with the opinion which had been expressed by his Excellency the Commander-in-Chief. His Excellency thought that the restriction would embody a stigma on the native community in general. It was equivalent to stating that under no circumstances, as far as the administration of the law was concerned, could the native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the powers of trying European British subjects.

He thought that by the restriction we in effect said to the European—"You are not to be tried in the mofussil by the agency by which you are tried in the High Court and in the courts of the magistrates in the Presidency towns, with the general approval and sanction of the European and native communities." It was saying in effect that the native who had attained to the position of a sessions judge was not competent to try a European British subject, but that he might try him when he became a judge of the High Court and sat beside a European judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these native civil servants to try a European British subject, than in permitting native justices in the Presidency towns to try him. There appeared to his Excellency to be no such broad distinction whatever between the conditions of the society and of public opinion in this respect between the Presidency towns and the mofussil. There were now a great number of public spirited men and a great deal of public spirit all over the Provinces. Communications by rail, the dissemination of newspapers both in English and the vernacular, and a great variety of other circumstances had destroyed that distinction which formerly existed between the Presidency towns and the mofussil. His Excellency did not himself consider that there was the slightest possibility that in the rare case of a civil and sessions judge trying a European British subject in the mofussil there would be an abuse of justice.

The Hon. Mr. Ellis.—But he desired to add his testimony to the efficiency with which native magistrates had performed their duties in the Presidency towns, in the administration of justice to both Europeans and natives, and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European magistrates. And if they had done that, he saw no reason why natives in the position of covenanted civil servants or sessions judges should not be equally competent to administer justice to the European in the mofussil. His hon. friend, Mr. Stephen, had remarked that in this matter we were not to consult the feelings of the judge, but of those who were to be subjected to the jurisdiction. In answer to that Mr. Ellis would say that he saw no reason why that which did not hurt the feelings of Europeans in the Presidency towns should hurt in the mofussil.

His Honour the Lieutenant-Governor.—After consideration, and having listened to the arguments, and given due weight to the weighty considerations which his Excellency the President had placed before the Council, his Honour was prepared to vote in favour of the very limited change which was proposed by the amendment.

The Hon. Sir Richard Temple.—He thought that the inference was undeniable that if the natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as judges over Europeans in the mofussil for offences of the trivial nature over which it was proposed to give justices of the peace

* Sir George Campbell.

† Lord Napier of Magdala.

‡ Lord Napier of Merchistoun.

cognizance. After what had fallen from hon. members, he felt that he ought not to give a silent vote on the subject. He would vote in favour of the amendment of his hon. colleague, Mr. Ellis.

The question being put, the Council divided—

<i>Ayes.</i>	<i>Noe</i>
His Excellency the President.	Hon. Mr. Strachey.
His Honour the Lieutenant-Governor.	Hon. Mr. Stephen.
His Excellency the Commander-in-Chief.	Major-General the Hon. H. W. Norman.
Hon. Sir R. Temple.	Hon. Mr. Inglis.
Hon. Mr. Ellis.	Hon. Mr. Robinson.
	Hon. Mr. Chapman.
	Hon. Mr. Stewart.

So the amendment was negatived.

(Confidential.)

No. 7
586-594.

From A. MACKENZIE, Esq., Secretary to the Government of India, to the LOCAL GOVERNMENTS and ADMINISTRATIONS.

Home Department.
Judicial.

SIR,

Simla, April 28, 1882.

I AM directed to forward for consideration the accompanying copy of a letter* from the Government of Bengal, on the subject of the position of native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction to be exercised over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects. It will be seen that, for the reasons set forth in paragraph 3 of that letter, the Lieutenant-Governor of Bengal is of opinion that the time has arrived when all native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed by Chapter XXXIII. of the new Code† of Criminal Procedure; or that at least native covenanted civilians, who have attained the position of district magistrate or sessions judge, should be entrusted with full powers over all classes of persons, European or native, within their jurisdictions. It is certainly anomalous that a native member of the Civil Service, holding the position of a district officer, should be debarred from taking up cases which his European assistants may try, and of which he himself, if appointed Presidency magistrate, would have full power to dispose. Before, however, taking any action of the kind suggested, the Governor-General in Council would be glad to be favoured with the opinion of his Excellency the Governor in Council on the subject.

I have, &c.

(Signed) A. MACKENZIE,
Secretary to the Government of India.

(Confidential.)

PUBLIC DEPARTMENT.

LETTER from the CHIEF SECRETARY TO THE GOVERNMENT OF FORT ST. GEORGE, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

SIR,

Ootacamund, June 8, 1882.

IN acknowledging your letter, No. 7-586, dated 28th April 1882 (confidential), on the subject of the position of native members of the Covenanted Civil Service in respect of criminal jurisdiction over European British subjects outside the Presidency

* No. 1411J., dated 20th March 1882, and enclosure (see p. 7).

† Act No. X. of 1882.

towns, I am to transmit the accompanying Minutes, which have been recorded by the members of Government on this important question.

2. It will be observed that while the Right Honourable the Governor and his Excellency the Commander-in-Chief are in favour of the proposed extension of jurisdiction, the Honourable Messrs. Huddleston and Carmichael have recorded Minutes of dissent.

I have, &c.
(Signed) C. G. MASTER,
Acting Chief Secretary.

MINUTE by the Honourable D. F. CARMICHAEL.

It is not true, as stated by Mr. Gupta*—whose error is not noticed by the Lieutenant-Governor of Bengal—that, previous to the passing of Act X. of 1872 (the existing Code of Criminal Procedure), no magistrate, even though a British subject himself, had jurisdiction (outside the Presidency town) to try a charge against a British subject. From the earliest days of British settlements in India, the Governor and his Council of every plantation, factory, or fort had plenary criminal jurisdiction over British subjects. After this, as each supreme court was established, British subjects resident in India, even without the Presidency towns, became amenable to those courts only. This restriction

S. cv.—53 Geo. III, Cap. 155.

proving very inconvenient was removed in the Company's Charter of 1813, which empowered district magistrates—extended afterwards to all persons exercising full magisterial powers—to adjudicate all complaints preferred against any British subject of assaults or other injuries, not being felonies. So that for nearly 60 years before the present Code of Criminal Procedure came into force, the British magistrate in the mofussil had pretty nearly the same authority which is given to him by that Code. The only considerable enlargement in the Code is the power given to a (British) mofussil session judge to deal with British subjects committed by the magistrate, provided that no severer sentence than one year's imprisonment shall be inflicted on conviction.

2. It is important to notice Mr. Gupta's mistake—because if we were going now for the first time to try British subjects in the mofussil, it would be difficult to defend the propriety of limiting the jurisdiction to British officials; but the case is different where it is proposed to legislate towards the forfeiture of an ancient privilege—dating perhaps—at any rate this is the common superstition—from Magna Charta, which declares that no Englishman shall be condemned except *per legale iudicium parium*?

3. I observe, from Mr. Gupta's extracts, that Sir James Stephen's view of the matter was that this is eminently a case where we should consult the feelings of those who are to be subjected to the jurisdiction. I agree entirely to this. Before the Company's Charter of 1833, the Government of India had not acquired the power of legislating as Mr. Gupta would desire. That Statute gave them the power of investing the mofussil courts with full criminal jurisdiction (the sentence of death excepted) over any of Her Majesty's natural born subjects and the children of such subjects. Practically, however, except the petty jurisdiction given to a session court presided over by a British subject, in the present Code passed in 1872, nothing whatever has been done, and we know why it has not been done; the British lion, a vulgar brute, no doubt, has wagged his tail and roared; that he would do so again now is, I think, pretty certain. To refuse the jurisdiction to the covenanted native magistrate is, I own, less defensible. He has lived some years in England, graduated at Oxford or Cambridge, and won his position by honourable competition with young English gentlemen. The members of the Civil Service receive him cordially, but "Society" in India unfortunately does not; we propose him at the club, where "Society" blackballs him; and I fear the lower orders of the Briton in India are not prepared to accept him as one to be trusted with their personal liberty. If they accept the native magistrate in the Presidency town, it is because there they are surrounded by thousands of public-spirited compatriots, who, they are sure, would never allow them to be injured.

4. Lastly, I would observe that there is no little inconsistency about the treatment of this question at Calcutta. At one time it was enacted that at all events every British

* Paragraph 2.

subject holding any of certain high judicial offices, ordinarily occupied by natives, in the mofussil, should be amenable to mofussil courts for corruption in the exercise of such office. After some years this Act was repealed; and when, during Lord Napier's government here, the courts of the Travancore State convicted and punished a British subject, its treasurer, for fraud, an immense stir was made at the Foreign Office; and a law was quickly passed that no Native State could so proceed by inherent right of sovereignty, though the contrary practice had prevailed in Travancore for 35 years under the formal approval of the British Government. So, at present, in Travancore, no Briton can be tried by a magistrate who is not a Briton, and such magistrate has no power at all, till invested with it by the Governor-General in Council. But if highly respectable natives are to try Britons in British India, how can we refuse to let natives of the same class do the same in Travancore territory, or in that of other civilised Native States?

5. After all, there is such a thing as privilege; this one is highly valued by those who possess it, and certainly does no harm to the native population; while its surrender would, in my opinion, cause great exasperation, perhaps accompanied with much political mischief, amongst Her Majesty's natural-born subjects, their children, and grandchildren, lawfully begotten, who now constitute the privileged class.

15th May 1882.

(Signed) DAVID F. CARMICHAEL.

MINUTE by the Honourable W. HUDLESTON.

I CONCUR in opinion with my honourable colleague, Mr. Carmichael, that the proposed extension of jurisdiction would be impolitic, and is not expedient; and I would note that Section 3, Act II. of 1869, which empowers the Government of India and local governments to "appoint such and so many of the covenanted civil servants of the Crown in "India or other British inhabitants" to be justices of the peace in British India beyond the Presidency towns (in which any persons, not subjects of a foreign state, may be so appointed), distinctly contemplated that the covenanted civil servants would be British inhabitants. It was clearly not anticipated or perceived that the contrary might be the case.

2. The position in the Presidency towns, with their European population and Bar, is essentially different from that of a mofussil court, where, in this Presidency at least, the accused might very probably be the only European British subject within a circuit of 100 miles, and with all due recognition of the merits of the native members of the Covenanted Service I do not think the position would be a fair one. I am confident it would raise an outcry that would aggravate race friction far more than the removal of the already existing disability attaching to a small number of officials would allay it.

3. Mr. Gupta seems to me to wrongly assume that the nominated members of the Native Civil Service are members of the Covenanted Civil Service.

16th May 1882.

W. HUDLESTON.

MINUTE by the Right Honourable the GOVERNOR.

I HAVE read with great care and much respect the opinions of my honourable colleagues Mr. Hudleston and Mr. Carmichael; but I cannot agree with them. It is perhaps a pity that a question was raised just now which affects so few people; but I see no answer to the claim made by Mr. Gupta, which is logically defensible. It may be that to admit that claim may wake up bad passions, which are now slumbering; but I trust this will not be so. We cannot stop where we are, if pressed to advance, without stultifying our past action. Very soon, if not immediately, the covenanted civilian of native birth, must be put on precisely the same footing as his European colleague. Mr. Gupta does not quite ask for this, in consequence of a misconception, which Mr. Hudleston has pointed out; but there is no safe standing-ground till we take up that position.

22nd May 1882.

M. E. GRANT DUFF.

MINUTE by his Excellency the COMMANDER-IN-CHIEF.

I AGREE with the remarks of his Excellency the Governor. I don't see how, in equity, any difference can be made in the position and power of British and native covenanted civilians.

23rd May 1882.

FRED. ROBERTS.

(Confidential.)

No. 4622, dated Bombay Castle, 28th July 1882.

From H. F. ASTON, Esq., Acting Under Secretary to the Government of Bombay, Judicial Department, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

IN answer to your letter No. 7-587 of 28th April last, inquiring as to the opinion of this Government on the question whether native covenanted civilians, or at least those of them who have attained the position of district magistrate or sessions judge should not be relieved of such restrictions as are imposed on their jurisdiction in relation to European British subjects by Chapter XXXIII. of the new Code of Criminal Procedure, I am directed to state that after consulting the higher judicial and magisterial officers in the Presidency on the question, and finding much diversity of opinion thereon, the Governor in Council has no hesitation in concurring with the preponderating opinion, which is to the effect that the disability of native judges and magistrates in respect to the jurisdiction in question should certainly be removed from those native members of the Covenanted Civil Service who attain to the position of district magistrate and sessions judge.

No. 692 of 1882.

From the OFFICIATING SECRETARY TO GOVERNMENT, N.W. Provinces and Oudh, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

Judicial Department.
(Criminal)

SIR,

Dated Naini Tal, May 27, 1882.

I AM directed to acknowledge the receipt of your letter No. ⁷/₅₈₈, dated 28th April, 1882, on the subject of the position of native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction to be exercised over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects.

2. The opinions of several officers of experience have been received and considered, and copy of a note recorded by Mr. Duthoit, D.C.L., Officiating Judicial Commissioner of Oudh, is forwarded for information.

3. The officers consulted are generally agreed that jurisdiction over European British subjects cannot any longer be withheld from native members of the Covenanted Civil Service as a class. They are unanimous in thinking that when a native member of the Service has risen to the position of a magistrate of a district or of a sessions judge, it is imperative that he should exercise over European British subjects the same jurisdiction as is exercised by European members of the Service who are magistrates of districts or judges. There is, however, some difference of opinion as to the circumstances under which the jurisdiction in question should be given to native members of the Civil Service who hold other offices than those above named. In the opinion of the majority of those consulted, it should be conferred on all native members of the Covenanted Civil Service who are possessed of the requisite judicial experience, and who have shown by their ability, judgment, and strength of character, that they are fitted to exercise it. The local government would exercise its discretion as to the individual native members of the Service upon whom the powers of a justice of the peace might be conferred. But the general statutory disability under which the native magistrates and judges now labour ought, they think, to be removed.

4. Sir Alfred Lyall's views on the subject are briefly these. No European officer is appointed to be a justice of the peace, or magistrate of a district, or sessions judge, until he has been found to be, by experience and character, fitted to exercise the powers and perform the duties which are attached to these offices. During the period that ordinarily elapses before any officer can attain to the position of magistrate of a district or judge, or is appointed to be a justice of the peace, ample opportunities are afforded of forming an opinion as to his qualifications for the offices in question; and he is not appointed to them if he has shown himself to be unfit to perform the duties and exercise the powers belonging to them. The interests of the European British subject and of the administration would, in Sir Alfred Lyall's opinion, be sufficiently provided for, if the general restriction, under which no one who is not himself an European British subject has jurisdiction over an European British subject, being removed, power be left with the local government to appoint as justices of the peace those native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The local government would then apply the test of personal fitness to each particular case for native as well as for European members of the Covenanted Civil Service.

5. On general principles of justice it must, Sir Alfred Lyall thinks, be admitted that the existing class differences between European and native members of the same service should be as far as possible removed. But so long as the special jurisdiction of justices of the peace, and the special procedure for the trial of European British subjects, are retained in our laws (and the Lieutenant-Governor would not have them withdrawn hastily, or upon a side issue), it is reasonable and consistent to look specially to the qualifications of officers who are to use these exceptional powers. In these Provinces there has not yet been an opportunity to form any very decided opinion about the character and qualifications of the native members of the Service; and the time is still distant when it will be necessary to apply to the native civilians of these Provinces the test of personal fitness for the charge of a district, or for the post of sessions judge. On general grounds however Sir Alfred Lyall considers that the influences which are now brought to bear on natives in the position of members of the Civil Service—influences arising from education and professional training, and from the responsibility that must necessarily fall upon them when placed on a level, and brought into comparison, with European officers—are rapidly rendering them as a class capable of exercising impartially the jurisdiction and judicial powers which are ordinarily exercised by European members of the Service.

6. It must, Sir Alfred Lyall thinks, be admitted that an officer who is appointed to be a district magistrate, should have jurisdiction over European British subjects. Inconveniences of various kinds would result if this jurisdiction were not enjoyed by every district magistrate. A native covenanted civilian, therefore, who is appointed to the charge of a district, ought to exercise this jurisdiction; for a native civilian, who may not be entrusted with the powers of a justice of the peace, is hardly fit to hold charge of a district. And if he as magistrate of a district may be trusted to exercise the powers of a justice of the peace, he should retain them when, his charge of a district being temporary, he reverts to a subordinate post. For it would be unreasonable to let a restriction, in regard to the exercise of jurisdiction over European British subjects, operate so as to bring about the anomalous result that an officer, though considered fit to exercise certain powers when officiating as district magistrate, is considered unfit to exercise them when he reverts to his former appointment.

7. Sir Alfred Lyall would therefore recommend that the Code of Criminal Procedure be so amended as to allow effect to be given to the views above expressed. Act II. of 1869 has now been repealed, but section 22 of the Code of Criminal Procedure (X. of 1882) forbids the local government to appoint any persons except European British subjects to be justices of the peace beyond the Presidency towns. It would be necessary therefore to amend the section in such a manner as to allow local governments to appoint native members of the Covenanted Service to be justices of the peace. It would be necessary in section 443 of the same Code to omit the words "and an European British subject;" in section 444 to omit all reference to European British subjects; and to repeal section 450. These amendments would enable the local government to carry out the views above expressed, whenever occasion might arise. In short, although the Lieutenant-Governor would not, for the present, advise that a native covenanted civilian should be invested (save in very special cases) with the powers of a justice of the peace until he has been appointed, temporarily or permanently, to be magistrate of a district, he would confer the powers of justice of the peace on every native officer, whether a member of the Covenanted Civil Service or a commissioned

civil officer in a non-regulation Province, who may be appointed to be a magistrate of a district.

I have, &c.
(Signed) J. R. REID,
Officiating Secretary to Government,
N.W. Provinces and Oudh.

NOTE by W. DUTHOIT, Esq., Officiating Judicial Commissioner of Oudh, dated Lucknow, the 19th May 1882.

THERE are, I suppose, two arguments in favour of restraining natives of India from the exercise of jurisdiction in criminal trials over Europeans:—

I. That, say what we may, the European is the dominant race in India, and as such is entitled to have its feelings considered and its prestige maintained.

II. That it is doubtful whether, in the exercise of jurisdiction over Europeans, the native judiciary would not be influenced by race prejudices.

There is, I think, much force in both these arguments.

As regards the former, I would remark that, go where we may in the East, we find that a claim to be judged by their peers is successfully asserted wherever Europeans are located in any numbers; and that there is much point in Mr. Fitzjames Stephens' remark (Supplement, "Gazette of India," 4th May, 1872, page 577)—"There is no country in the world and no race of men in the world from whom a claim to absolute identity of law for persons of all races and all habits comes with so bad a grace as from the natives of this country, filled as it is with every distinction which race, caste, and religion can create, and passionately tenacious as are its inhabitants of such distinctions." But the time has, I think, come when these considerations may wisely be disregarded; and I would not advocate the restriction of the powers of native covenanted civilians upon an argument based upon mere sentiment. We have taken the native into our most important governing body; let us treat him loyally, and, as far as may be, trust him.

In the latter of the two arguments, however, I find a valid reason for not placing our native brothers quite on the same platform with ourselves.

As Mr. Gupta has pointed out, we have now two classes of covenanted civilians, the men who have entered the service by competition in England, and the men who have been appointed to it by the Viceroy in India.

These two classes of men must, I think, be treated differently.

The men of the former class will, from the circumstances of the case, be men who have in their own persons overcome the caste and religious prejudices into which they were born, and who are more or less *au courant* with European feelings and customs. Those of the latter class, on the contrary, may often be men saturated with caste and religious prejudices, and ignorant of European modes of thought and feeling. In his own person a man of the former class is likely to be as impartial a judge as his European brother, and to influence from outside he would probably be almost equally inaccessible. But can we, for a long time at any rate, look for the same impartiality, the same inaccessibility to outside influences, in the latter class of men? I think not. We must not, I think, expect for some time to come to find in the latter class of men officers of higher intellectual capacity or greater strength of character than we have at present in our native uncovenanted and honorary magistrates of good family. I do not know what officers of the last mentioned classes may be like in other parts of India; but I am certain that in these Provinces they are not men who can be fully trusted to do even-handed justice as between their own countrymen of different religions, or between their own countrymen and Europeans. When I say this, I do not mean that they would be likely as a rule to press hardly upon the European; I think, on the contrary, that they would as a rule, unduly favour the European; all that I mean is that from my experience of them I could not always trust them to hold the scales fairly. It is apt to be assumed that native civilians will make good judges. I take leave to doubt whether more than a small minority of the men appointed for some years to come by the Governor-General will ever be fit for judicial employment.

Things being so, I would make a distinction between the two classes of native civilians.

I would make it the rule, in default of special cause to the contrary, to appoint men of the former class (the men appointed in England by the Secretary of State) to be justices

of the peace under Act II. of 1869. I would only appoint men of the latter class (the men appointed in India by the Viceroy) to be justices of the peace after it had been fully ascertained that they are men fitted by strength of character and judicial ability to exercise high judicial functions.

Assuming the appointment of native civilians as justices of the peace to be restricted as above, I would meet the difficulty by omitting the words "and an European British subject" from between the words "first class" and the words "shall inquire" in section 443 of the new Code of Criminal Procedure; by substituting for the words "himself is an European British subject" in section 444 the words "is a justice of the peace;" and by substituting for the words "an European British subject" in section 450 the words "a justice of the peace."

It will perhaps be objected to this proposal that it interferes with the theory upon which the system of appointment of native covenanted civilians of the Viceroy, viz., that they should be treated in all respects as the civilians sent out from England, is based. The objection is valid; but I would reply that as a fact the men appointed in India do not all of them come up to the standard of excellence which was propounded for them, and that the adoption of the proposal will not require an invidious distinction to be publicly made, but merely the laying down of a rule of practice to be privately observed by the Government of India and the local governments.

No. 703, dated Lahore, 5th August 1882.

From W. M. YOUNG, Esq., Secretary to the Government of the Punjab, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

I AM directed to acknowledge your letter No. 7—589, dated 28th April 1882, forwarding, for an expression of the Lieutenant-Governor's opinion, a copy of a letter from the Government of Bengal, recommending that all native members of the Covenanted Civil Service should be relieved from such restrictions of their jurisdiction over European British subjects outside the Presidency towns, as are imposed by Chapter 33 of Act X. of 1882, or that at least native covenanted civilians, who have attained the position of district magistrate or sessions judge, should be entrusted with full powers over all classes of persons, European or native, within their jurisdiction.

2. In reply I am to say that Sir Charles Aitchison entirely concurs in the arguments quoted in the enclosures of your letter, from the proceedings of the Legislative Council of 16th April 1872, and has little to add to them. His Honour considers that native members of the Covenanted Civil Service should be relieved from all restrictions and disqualifications imposed upon them under Chapter XXXIII. of the new Code of Criminal Procedure, Act X. of 1882, by reason only of their not being European British subjects; and that such of them as may be from time to time appointed justices of the peace and magistrates of the first class, or sessions judges, should be authorised by law to exercise all the powers and jurisdiction which a European British subject similarly appointed can exercise under that or any other Act.

3. Sir Charles Aitchison moreover is of opinion that the same powers ought to be conferred upon all justices of the peace, and first class magistrates, and upon all sessions judges, whether they are European or native, and whether they belong to the Covenanted Civil Service or not. The powers and jurisdiction to be exercised by judicial officers should, his Honour thinks, depend entirely upon personal fitness, and in no respect upon race or service distinctions. It may be assumed that no one of any class will be appointed a justice of the peace or magistrate of the first class or sessions judge, who is not considered to possess the requisite qualifications, and the appointment ought, therefore, to carry with it all the usual powers and jurisdiction without regard to race, service, or creed. Under Act II. of 1869, any British* subject, whether European or native, and whether belonging to the Covenanted Civil Service or not, may be made a justice of the peace, if he is considered properly qualified to act as such, and under section 5 of the Act every such justice of the peace has power to commit European British subjects for trial before a proper court, and to do all other acts which any justice of the peace may lawfully do, and this appears to Sir Charles Aitchison to be the broad and equitable principle which Government ought to follow. The restrictions introduced by the Code of Criminal Procedure upon the powers of courts to inquire into and try charges against

* No. British subject there means European British subject.

European British subjects, which rest exclusively on race distinctions, are, in his Honour's opinion, invidious and unnecessary. They are indeed a mere residuum of the time when Europeans were to a great extent under English law, with which native judges were not supposed to be acquainted, and should now be entirely abolished, having ceased to be defensible with the revision of the Codes.

No. 1694-86, dated 15th May 1882.

From A. H. L. FRASER, Esq., Officiating Secretary to the Chief Commissioner of the Central Provinces, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

I AM directed to acknowledge receipt of your letter No. 7-590, dated 28th ultimo., regarding the position of native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction to be exercised over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects. The Chief Commissioner is of opinion that native members of the Covenanted Civil Service should be placed in this respect on the same footing as European members of the same Service, and should be relieved of such restrictions of their powers as are imposed by Chapter XXXIII. of the new Code of Criminal Procedure.

No. 360, dated Rangoon, 11th May 1882.

From E. S. SYMES, Esq., Junior Secretary to the Chief Commissioner of British Burma, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

I AM directed to acknowledge the receipt of your letter, No. 7-59, dated the 28th April, concerning the investiture of native civil servants with power to try European British subjects within their jurisdictions.

I am to submit that, in the Chief Commissioner's opinion, it is desirable that native civil servants should possess the same jurisdiction over European British subjects as is exercised by European civil servants. Native civil servants are and will usually be quite fit to exercise such jurisdiction.

European British subjects are liable to the jurisdiction of Asiatics in Upper Burma; and the Chief Commissioner does not apprehend that there would be any prolonged feeling against the change advocated by the Bengal Government among the better classes of Europeans in India.

(Confidential.)

No. 764, dated Shillong, the 26th May 1882.

From C. J. LYALL, Esq., C.I.E., Secretary to the Chief Commissioner of Assam, to the SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

I AM directed to acknowledge the receipt of your confidential circular No. 539T, dated the 28th ultimo, in which you ask for the opinion of the Chief Commissioner on the proposals made by his Honour the late Lieutenant-Governor of Bengal, that all native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed by Chapter XXXIII. of the new Code of Criminal Procedure, or that at least native covenanted civilians who have attained the position of district magistrate and sessions judge should be entrusted with full powers over all classes of persons, European or native, within their jurisdictions.

2. In reply, I am to say that if the proposal had been to do away altogether with the distinction between European and native magistrates in this respect, Mr. Elliott would not have supported it. The distinction is, no doubt, open to the charge of being invidious, and rests to a large extent rather upon sentiment and prejudice than upon reason. But that such prejudice did exist in great strength some years ago is notorious; and now

that the feeling has somewhat died out, the measures taken for introducing equality between the races should be gradual and tentative, in order to run no risk of reawakening the antagonism which is passing away. It should not be forgotten, moreover, that besides the strong disinclination which would undoubtedly be felt by European British subjects in India to being made subject generally to the jurisdiction of native judges and magistrates there are several practical reasons against that course which are not without great weight. An extensive conferment of these powers on native magistrates would involve the trial by them of Europeans in parts of the country where neither our police nor our jails are suited for dealing with such persons. The appearance of Europeans in court before a native magistrate, surrounded by native amla, and guarded by native police, accustomed only to deal with the generally tractable and (in the face of justice) submissive members of their own race, might easily lead to scandals in the administration of justice, which would be very regrettable, and which would, Mr. Elliott fears, by the excitement and agitation which they would create, lead to exacerbation and strengthening of that popular prejudice and race antagonism, which it has taken a long course of years to soften and abate.

3. But while these considerations, in the Chief Commissioner's opinion, should forbid any extensive conferment of jurisdiction over Europeans upon native judicial officers at present, he is quite at one with Sir Ashley Eden in regard to the limited proposal now put forward. He thinks that there is room and reason for a distinction between native civilians appointed in England by competition, and those native members of the Covenanted Service who have been appointed by nomination in India. The former class should, in his opinion, be placed in every respect on an equality with their British-born brothers in the Service, and permitted, like them, if appointed justices of the peace, to deal with cases in which Europeans are accused. In the case of native civilians appointed in India, who have not had their experience enlarged and their education broadened by a visit to Europe, he would confine the extension of these powers to such of them as have attained the grade of district magistrate or sessions judge, and have also been appointed justices of the peace.

4. The Chief Commissioner does not think that this slight progress in the direction of equality is likely to excite any serious opposition on the part of the European community. The feeling which 10 years ago it would have encountered is, he believes, gradually dying out; and the experience which is being acquired of the efficiency with which native officers administer justice is by degrees undermining it. The extension of native agency in the public service, and the increase of the influence of the native voice in all political matters, are palpable facts, and the European settler is learning that he must reconcile himself to the march of events, and accept the inevitable.

No. 315-17, dated Bangalore, the 16th May 1882.

From Major H. WYLIE, C.S.I., Secretary to the Chief Commissioner of Coorg, to the
SECRETARY TO THE GOVERNMENT OF INDIA, Home Department.

WITH reference to your letter No. 7-592, dated the 28th ultimo, inviting the opinion of the Chief Commissioner of Coorg, regarding native members of the Civil Service exercising jurisdiction over European British subjects, I am directed to state, for the information of his Excellency the Viceroy and Governor-General in Council, that Mr. Sandford is of opinion that the provisions of the present law of Criminal Procedure, which limit jurisdiction to try for criminal offences European British subjects, to persons who are themselves European British subjects, are wise, and should, for political reasons, be maintained.

No. 345, dated Hyderabad Residency, 24th August 1882.

From W. B. JONES, Esq., B.C.S., Resident at Hyderabad, to the SECRETARY TO THE
GOVERNMENT OF INDIA, Home Department.

REPLYING to your Circular No. 3-594 of 28th April last, I have the honour to submit, in original, a letter in which the Commissioner, Hyderabad assigned districts, discusses the matter there referred. The Judicial Commissioner, who was also consulted,

is of opinion that "the time may be considered to have arrived for extending to natives
" who have qualified for the Civil Service, and who have attained the position of district
" magistrate, or of sessions judge and justice of the peace, jurisdiction over European
" British subjects."

2. My own opinion is that such jurisdiction should be exercised by—

- (1.) All native members of the Civil Service who have attained the position of district magistrate or sessions judge;
- (2.) By such other native members of the Civil Service as the local government may specially empower in this behalf.

3. It is scarcely necessary for me to state in detail the reasons which induce me to give my opinion in favour of the small relaxation of the present law which his Honour the Lieutenant-Governor of Bengal suggests. The principle that a European British subject shall only be tried by one of his own class has the sanction of a long history behind it. I certainly should not be disposed to rest a recommendation for a departure from it on consideration of mere administrative convenience. All that can be said is that the reasons by which the general principle might be defended have, from the days when it was first asserted, until now, been gradually getting weaker, and that the reasons for the particular departure from the principle now proposed are the novel results of the altered circumstances of the Civil Service and of India generally, and that, to use the Judicial Commissioner's expression "the time has come" when the change ought to be made. It will be a small change in itself, but it will be an act of justice to those natives of India whom we invite to take their places by our side as civil administrators, and will add on to the numerous measures which of late years have tended to bridge over the separation between Englishmen and their Indian fellow subjects, which began when, assuming the Dewani of Bengal, we constituted ourselves the sole civil administrators of the country.

4. I will only add that, while the proposed change appears to me to be demanded of us as a measure of justice to native members of the Civil Service, and of reasonable concession to general native opinion, I cannot believe that it can be regarded by intelligent Europeans with serious dislike. In days when the interior of India was reached with difficulty, when no press, railways, telegraphs, or bar existed, when native magistrates were untrained and unacquainted with European habits and feelings, an Englishman almost alone in an up-country district, might, with reason, apprehend that he would not always obtain an impartial trial before a native magistrate. All this is now changed, and a claim which was formerly grounded in a reasonable apprehension can, it seems to me, when concession is limited, as it is proposed to limit it, rest on little besides unreasonable class prejudice.

No. 32A, dated Chiculda, 1st June 1882.

From A. P. HOWELL, Esq., Commissioner, Hyderabad Assigned Districts, to the
SECRETARY FOR BERAR TO THE RESIDENT at Hyderabad.

I HAVE the honour to acknowledge your No. 319J of the 8th instant, forwarding, for opinion, a letter from the Government of Bengal, with enclosure, relative to the jurisdiction to be exercised by native members of the Covenanted Civil Service over European British subjects.

2. The Lieutenant-Governor is of opinion that the time has now arrived when all native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXIII. of the new Code of Criminal Procedure, or when "at least native covenanted civilians, who have attained the position of district magistrate or sessions judge, should have entrusted to them full powers over all classes, whether European or native, within their jurisdictions." The grounds of this opinion are (1) that it is right, as a matter of general policy, that covenanted native civilians should be empowered to exercise jurisdiction over Europeans as well as natives; and (2) that it will be a matter of administrative convenience for natives to exercise such powers, otherwise the anomaly might occur of a European joint magistrate, who is subordinate to a native district magistrate or sessions judge, being empowered to try cases which his immediate superior cannot try. It is added that as native Presidency magistrates within the Presidency towns exercise the same jurisdiction

over Europeans that they do over natives, therefore there is no reason why covenanted native civilians, with the position and training of district magistrate or sessions judge, should not exercise the same jurisdiction over Europeans as is exercised by other members of the Service. These views are expressed upon a note by Mr. Gupta, of the Bengal Civil Service, representing the anomalous position in which native members of the Covenanted Civil Service are placed by Chapter VII. of the old Code, which is reproduced in Chapter XXXIII. of the present Code.

3. The first point that occurs to me is, that the case is, unintentionally no doubt, very unfairly and incompletely stated by Mr. Gupta. He refers to the discussion of 1872, and says that nothing can be added to the eloquence or the sound reasoning of those who argued then in favour of the view which he advances now. He adds that the arguments of 1872 in favour of his view present themselves with redoubled force in 1882, and that "they are too obvious to require mention." Still he does mention them, and at length, in skilfully arranged "extracts for ready reference," and then he gives a reason, due to a recent but "important change" in the constitution of the Covenanted Civil Service, why there is admittedly less force in those arguments now than there was 10 years ago.

4. To this I reply that if the arguments in favour of Mr. Gupta's view are all that they are represented to be, how is it that they were in the minority in 1872? Mr. Gupta attempts to make a point in the composition of that minority, but when I find Sir J. Stephen and Sir John Strachey voting on the same side, and that side the majority, it is idle to say that the arguments against which they voted are "too obvious to require mention." Mr. Gupta cites the authority of the late Lieutenant-Governor of Bengal (Sir George Campbell), who voted with the minority, but Mr. Gupta fails to notice in his extract, or even allude to Sir George Campbell's admission, that he seldom had greater doubt and difficulty in making up his mind, and that when he did vote for the amendment, it was on the express ground that "it appeared to his Honour that what " was now proposed was a minimum of change. It was not proposed to impose upon " the European public the general liability to be tried by native magistrates, but only " the possibility of being placed under the jurisdiction of three or four natives who had " qualified themselves for admission into the ranks of the Covenanted Civil Service, and " who, under the existing law, might be 'justices of the peace.' " What then was Sir J. Stephen's argument? I give it, as Mr. Gupta gives the opposite views, in extracts : " In countries situated as most European countries are, it is no doubt desirable that " there should be no personal laws ; but in India it is otherwise. Personal, as opposed " to territorial, laws, prevail here on all sorts of subjects, and their maintenance is claimed " with the utmost pertinacity by those who are subject to them. The Muhammadan has " his personal law. The Hindu has his personal law. Women, who according " to the custom of the country, ought not to appear in court, are excused from " appearing in court. Natives of rank and influence enjoy, in many cases, " privileges which stand on precisely the same principle ; and are English people " to be told that, whilst it is their duty to respect all these laws scrupulously, they are to " claim nothing for themselves ? that whilst English courts are to respect, and even to " enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions " of Englishmen, Englishmen who settle in this country are to surrender privileges to " which, rightly or otherwise, they attach the highest possible importance ? I can see no " ground or reason for such a contention. I think there is no country in the world, and " no race of men in the world, from whom a claim for absolute identity of law for persons " of all races and all habits comes with so bad a grace as from the natives of this country, " filled as it is with every distinction which race, caste, and religion can create, and " passionately tenacious as are its inhabitants of such distinctions.

" It may be replied that to use this argument is to desert the characteristic principles " of English Government, and to make a point against an antagonist by surrendering what " we ourselves believe. My answer is, that the general principle that all persons should " be subject to the same laws is subject to wide exceptions, one of which covers this case. " It is obvious enough ; but possibly the best way of stating it will be to show how it " applies to the particular matter before us. The English people established by military " force a regular system of government, and, in particular, a regular system for the " administration of justice, in this country, in the place of downright anarchy. The " system for administering justice was, and is, beyond all question, infinitely better than " any system which the English people found here ; but it neither is, nor can be, the " English system.

"It must of necessity differ from it in its characteristic features; and although I am not one of those who blindly admire the English system of criminal justice, I say that, if English people in India like it, which they notoriously do, they have a perfect right to have it."

Again:—"The privilege as to jurisdiction is the privilege of the prisoner not the privilege of the judge. The European had an objection to be tried by the native. Considering the position in which he stood, the question was whether you would put him in a position in which he did not at present stand. You placed no slight upon the native by saying that he could only try a man of his own race. What was there against the feelings of the native in saying that? Why should any one feel a slight, because he was told that this particular man was to be tried in a particular way? On the other hand, it was a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen."

I think Mr. Gupta would have strengthened his case had he explained what is the answer now to Sir J. Stephen's arguments which commanded a majority ten years ago. Logically it would seem that as long as we have personal law in this country, as long as women and privileged natives are excused from appearing in our courts, as long as the European British subject has any rights and privileges under the law, so long should the present law, as to the judge before whom the European British subject must be tried, be maintained. I submit that when a European discusses the question he is exposed to the converse difficulty of that urged by Mr. Gupta, on the score of being personally interested, and that he is likely to be deceived by the false glamour of liberality attaching to his adoption of Mr. Gupta's view, which ought not, however, to obscure the real issue whether, under the circumstances of India, the European British subject should be deprived of the one privilege of personal law which he most values. The question is by no means so obvious as Mr. Gupta represents. I believe that the majority of non-official Europeans would answer it still as Sir H. Norman did. "He had the highest regard for the natives of the country, and particularly for those who had attained the very important position of a magistrate of the first class, but looking to the peculiarities of our position here, and to the great differences of character between natives and Europeans, he thought it was undesirable to allow the trial of European British subjects by natives in the mofussil."

5. As to the arguments urged by the Government of Bengal, the first simply and admittedly begs the whole question on which Sir J. Stephen and Sir H. Norman took their stand. As for the second argument, based on administrative convenience, the question is how often would such cases be likely to arise, and whether, if they did, the inconvenience would be so frequent, or of such consequence as to supply an answer to the arguments of Sir J. Stephens and Sir H. Norman, which, I submit, are just as strong now as ever they were. In any case the plea of anomaly has far less force in India than elsewhere. Surely, too, it might be argued that natives and Europeans are not on the same footing in fact, in many ways, and that the law recognises this fact; that there must be some differences in the position of the European British subject from that of the native, and that the law recognises these differences; and that the nationality of the judge is no more invidious or special than the composition of the jury.

6. In conclusion then, if I am asked for an opinion about a clause in a Law which, although only just passed, and not yet actually in force, is considered by a high authority already to require to be amended in an important particular, I would admit that there is enough force in the plea urged by Mr. Gupta, and supported by the Bengal Government, to warrant a reconsideration of the question decided in the Legislative Council on the 4th May 1872. I go further and think that the point should be raised and discussed now, because in 1872 many of the speakers were hampered by pledges or *quasi* pledges which prevented the question being really decided on its merits. And as to the merits of the question, I would say that it is no doubt desirable that there should be no personal laws, but that, in my humble opinion, the whole question of personal law should be considered together, and not the single point raised by Mr. Gupta. And, if the question be raised, the decision should be final, for we cannot always expect the same serenity in the political horizon which we enjoy at present.

I append the replies of the Deputy Commissioners of Buldana and Amraoti, who were consulted on the subject.

In my opinion the time has certainly come when native members of the Civil Service who have been made district magistrates or sessions judges should be entrusted with full powers over all classes, European or native, within their jurisdiction.

Amraoti, 27th May 1882.

B. BULLOCH,
Deputy Commissioner.

I AM of opinion that the invidious distinction should be abolished, or that an understanding should be arrived at under which native members of the Covenanted Civil Service would be held to be disqualified for office as sessions judges or magistrates of the district. I quite agree with Mr. Gupta that if you entrust them with these responsible offices you ought not to cripple their powers.

There is, however, no force in so much of the argument as is based on the fact that native Presidency magistrates and High Court judges already have jurisdiction over Europeans. They are exposed to a publicity that renders their position exceptional. Mr. Gupta himself seems inclined to make distinction between native covenanted civilians who have been trained in England and those who have not, and I think he does so rightly. I am therefore inclined to believe that the latter class of civilians should not hold office as sessions judges or magistrates of districts. In other words, I would make the experiment under restricted conditions, and confine the exercise of jurisdiction over Europeans to native civilians who have been trained in England.

H. C. MENZIES, Lieut.-Col.,
Deputy Commissioner.

Buldana, 29th May 1882.

TO HIS EXCELLENCY THE MOST HONOURABLE THE GOVERNOR-GENERAL OF
INDIA IN COUNCIL.

(Judicial, No. 33.)

MY LORD MARQUIS,

India Office, London, December 7, 1882.

PARA. 1. I have to acknowledge the receipt of your Excellency's Despatch, No. 33, dated the 9th of September last, on the subject of the position of native members of the Covenanted Civil Service under those provisions of the Code of Criminal Procedure which limit the jurisdiction over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects also.

2. Your Lordship in Council considers (for the reasons stated in your Despatch) that no change in the law will be satisfactory or stable which fails to remove from the statute book at once and completely every judicial disqualification which is based merely on race distinctions, and you propose to confine the office of justice of the peace, and with it the power of trying European British subjects, to those persons, whether European or native, who have received a training that may be presumed to guarantee the possession of the qualities required for the proper disposal of such cases. In that view you think that all district magistrates and sessions judges should be vested with the powers in question in virtue of their office, and by a definite provision in the law; and you would empower the local governments to confer these powers, outside the Presidency towns, upon those members (a) of the Covenanted Civil Service, (b) of the Native Civil Service constituted under the Statutory Rules, and (c) of the Non-Regulation Commissions, who are already exercising first-class magisterial powers, and are, in their opinion, fit to be entrusted with these further powers. These proposals, if carried out, would completely remove from the law all distinctions based merely on the race of the judge, and your Excellency in Council asks me to sanction the introduction of a Bill to give effect to them.

3. Your Lordship's Despatch, and the opinions recorded by the various local governments and authorities whom you have consulted, have been very carefully considered by me in Council, and I agree in the conclusion arrived at by your Excellency that the time has come when it is necessary to make the alterations in the law which you propose. I am therefore prepared to sanction the introduction of a Bill such as you suggest.

I have, &c.

(Signed) HARTINGTON.

Copy Telegram from VICEROY, Calcutta. (Dated 14th February 1883.)

WITH reference to correspondence ending with Lord Hartington's Despatch, No. 33, judicial of 7th December last, we have introduced into the Governor-General's Council a Bill to amend the Criminal Code Procedure Bill.

Section 1 amends section 22 of the Code, and makes the following persons, being magistrates of the first class, eligible for the office of justice of the peace; viz., cove-

nanted civilians, members of the Native Civil Service constituted under statutory rules, assistant commissioners in non-regulation provinces, and cantonment magistrates.

Section 2 makes sessions judges and district magistrates *ex-officio* justices of the peace.

Section 3 repeals in section 443 of the Code, the words, "and in European British subjects."

Section 4 repeals the provision in section 444 of the Code barring jurisdiction over European British subjects, of a judge not being an European British subject.

Section 5 repeals section 450 of the Code, and the last sixteen words of section 459 of the Code.

(In) rest of the Bill formal right to mixed jury, and to summary application for release, and all other safeguards under Chapter 33 preserved.

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EAST INDIA (NATIVE JURISDICTION OVER BRITISH SUBJECTS).

FURTHER
CORRESPONDENCE

ON THE SUBJECT OF

THE PROPOSED ALTERATION OF THE PROVISIONS

OF

The Code of Criminal Procedure with respect to Jurisdiction
over European British Subjects.

Presented to both Houses of Parliament by Command of Her Majesty.
1883.



LONDON:
PRINTED BY GEORGE E. B. EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1883.

[C.—3545.] Price 1½d.

FURTHER CORRESPONDENCE, &c.

No. 6 of 1883.

GOVERNMENT OF INDIA.—LEGISLATIVE DEPARTMENT.

To the Right Honourable the EARL OF KIMBERLEY, Her Majesty's Secretary of State for India.

MY LORD,

Fort William, the 13th February 1883.

WE have the honour to forward herewith a copy of the Bill noted in the margin,

A Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

which was introduced into the Council of the Governor-General on the 9th instant.

2. A copy of the statement of objects and reasons and of the abstracts of proceedings of the meetings of the Council on the 2nd and 9th instant also accompany.

We have, &c.

(Signed)

RIPON.

D. M. STEWART.

J. GIBBS.

E. BARING.

T. F. WILSON.

C. P. ILBERT.

S. C. BAYLEY.

T. C. HOPE.

A BILL TO AMEND THE CODE OF CRIMINAL PROCEDURE, 1882, so far as it relates to the exercise of JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects: It is hereby enacted as follows:—

Preamble.
X. of 1882.

1. For the last clause of section 22, the following shall be substituted:—

Amendment of
section 22.

“may, by notification in the official gazette, appoint such persons as he or it thinks fit, who, being

- (a) members of the Covenanted Civil Service,
- (b) members of the native Civil Service constituted under the Statute 33 Vict. cap. 3,
- (c) assistant commissioners in non-regulation provinces, or
- (d) cantonment magistrates,

are invested with the powers of a magistrate of the first class, to be justices of the peace within and for the territories mentioned in the notification.”

2. In section 25, after the words “British India” the following shall be inserted:—

Amendment of
section 25.

“sessions judges and district magistrates are justices of the peace within and for the whole of the territories administered by the Local Government under which they are serving.”

3. In section 443, the words “and an European British subject” shall be omitted.

Amendment of
section 443.

4. For section 444, the following shall be substituted:—

New section substituted for section

“444. An assistant sessions judge shall not exercise jurisdiction over an European British subject, unless he has held the office of assistant sessions judge for at least three years, and has been specially empowered in this behalf by the Local Government.”

Assistant sessions judges who may be European British subjects.

5. Section 450 and the last sixteen words of section 459 are hereby repealed.

Repeal of section and of the last six words of section 4

6. (1) In this Act “section” means section of the Code of Criminal Procedure, 1882.

Construction of A with Code of Criminal Procedure. X. of 1882.

(2) All references to that code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

7. Nothing in this Act shall affect the validity of any appointment made before the passing of this Act.

Saving for existing appointments

STATEMENT OF OBJECTS AND REASONS.

SHORTLY after the Code of Criminal Procedure, Act X. of 1882, was passed, the question was raised whether the provisions of that Code which limit the jurisdiction over European British subjects outside the Presidency towns to judicial officers who are themselves European British subjects should not be modified. It was thought anomalous that, while natives of India were admitted to the Covenanted Civil Service and held competent to discharge the highest judicial duties, they should be deemed incompetent to be justices of the peace and to exercise jurisdiction over European British subjects outside the Presidency towns.

2. After consulting the local Governments, the Government of India has arrived at the conclusion that the time has come for modifying the existing law and removing the present bar upon the investment of native magistrates in the interior with powers over European British subjects. The Government of India has accordingly decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race distinctions.

3. With this object the present Bill has been prepared. In section one it amends section 22 of the Code, which provides that only European British subjects can be appointed justices of the peace, and gives the Government power to appoint to that office such persons as it thinks fit belonging to the following classes :—

- (a.) Members of the Covenanted Civil Service ;
- (b.) Members of the Native Civil Service constituted by the rules made under the Statute 33 Vic., cap. 3 ;
- (c.) Assistant Commissioners in Non-Regulation Provinces ; or
- (d.) Cantonment magistrates,

and being persons invested with the powers of a magistrate of the first class.

4. The Bill then in section two amends section 25 of the Code, and makes all sessions judges and district magistrates *ex officio* justices of peace.

5. Section three repeals so much of section 443 of the Code as limits jurisdiction over European British subjects outside the Presidency towns to magistrates who are themselves European British subjects.

6. Section four repeals the similar provision of section 444 of the Code with regard to sessions judges.

7. Lastly, section five repeals section 450 of the Code, which provides for the case where the sessions judge of the division within which the offence is ordinarily triable is not an European British subject. The same section of the Bill also repeals so much of section 459 of the Code as provides that that section shall not be deemed to confer on magistrates and sessions judges outside the Presidency towns, not being European British subjects, jurisdiction over European British subjects.

The 30th January 1883.

C. P. ILBERT.

ABSTRACT of the PROCEEDINGS of the COUNCIL of the GOVERNOR-GENERAL of INDIA, assembled for the purpose of making LAWS and REGULATIONS under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 2nd February 1883.

PRESENT :

His Excellency the Viceroy and Governor-General of India, K.G., G.M.S.I., G.M.I.E., presiding.

His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Honourable J. Gibbs, C.S.I., C.I.E.

Major the Honourable E. Baring, R.A., C.S.I., C.I.E.

Lieutenant-General the Honourable T. F. Wilson, C.B., C.I.E.

The Honourable C. P. Ilbert, C.I.E.

The Honourable Sir S. C. Bayley, K.C.S.I., C.I.E.

The Honourable T. C. Hope, C.S.I., C.I.E.
 The Honourable Mahārājā Sir Jotindra Mohan Tagore Bahádur, K.C.S.I.
 The Honourable C. H. T. Crosthwaite.
 The Honourable Rájā Siva Prasád, C.S.I.
 The Honourable W. W. Hunter, LL.D., C.I.E.
 The Honourable Durgá Charan Láhá.
 The Honourable H. J. Reynolds.
 The Honourable H. S. Thomas.
 The Honourable G. H. P. Evans.
 The Honourable R. Miller.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Honourable Mr. Ilbert moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects. He said:—The effect of the existing law on this subject is summed up in a section of the new Criminal Procedure Code (443), which directs that—

“No magistrate, unless he is a justice of the peace, and (except in the case of a Presidency magistrate) unless he is a magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.”

“Now, there is no restriction on the nationality of a Presidency magistrate; natives of India may hold, and have held, that office. The result of the law, therefore, is that, within the limits of the Presidency towns, jurisdiction over European British subjects may be exercised by any person who happens to be a Presidency magistrate, whether he is a European British subject or not; but that, outside these limits, in any part of the mufassal, that jurisdiction cannot be exercised by any of Her Majesty’s magistrates, however complete may have been his training—however long may have been his judicial experience—however high may be his rank in the service—unless he happens to be a European British subject.

“Such is the existing law, and it was settled in this form in the year 1872, after a very remarkable debate, which resulted in a very remarkable division. The Select Committee on the Bill, which afterwards became law as the Criminal Procedure Code of 1872, had adopted a resolution in which they recorded their opinion ‘that the jurisdiction of ‘magistrates and sessions judges who are justices of the peace might with advantage be ‘extended in the case of European British subjects.’ It will be observed that there was nothing in the resolution which implied that the exercise of this jurisdiction in future was to be confined to persons who are themselves European British subjects. Such a limitation was, however, inserted in the Bill as finally settled by the Committee; but when it was brought before the Legislative Council, Sir Barrow Ellis (I shall take the liberty of referring to him and others by the titles which they now bear) moved an amendment which would have had the effect of striking out the limitation. It would appear that the limitation to which he objected had in fact been introduced in pursuance of some kind of bargain or compromise between members of the Committee holding different opinions on the subject. Repeated references were made in the course of the debate to the existence of this compromise. Thus, Mr. Chapman, whilst expressing his agreement with much that had fallen from Sir Barrow Ellis, said that he felt himself unable to support the amendment for the very plain and conclusive reason that he, as member of the Select Committee, considered himself bound to adhere to the pledge he had given to the European community, that under the altered law, an Englishman should retain his privilege of being tried by an Englishman. Again, Mr. Inglis said that he did not intend to go into the question on its merits, as he considered that he was bound by the terms of the recommendation which he had signed with other members of the Committee. My eminent predecessor, Sir James Stephen, who was in charge of the Bill, declared in the most emphatic terms that he could not undertake to justify on principle the terms of a compromise. And Sir J. Strachey, who also supported the proposals, admitted that the provisions of the Bill represented a compromise which was open to criticism of every kind. The amendment moved by Sir Barrow Ellis was put to the vote, and was lost on a division by a majority of seven to five. But the minority on the division included the majority of the Executive Council. It consisted of the then Viceroy, Lord Napier of Murchistoun, the then Lieutenant-Governor of Bengal, Sir G. Campbell, his immediate successor, Sir R. Temple, the then Commander-in-Chief, Lord Napier of Magdala, and Sir Barrow Ellis. Each of these distinguished members of the Government of India not only voted but spoke in support of Sir Barrow Ellis’s

amendment and against the proposals that are embodied in the existing law. And I shall make no apology for quoting to day some of the arguments which they used, and some of the opinions which they expressed.

"Sir Barrow Ellis said that, in making the invidious distinction which was now proposed, if we excluded any justices of the peace from the exercise of certain powers, we were really casting a stigma on the whole educated native population of India. He might also urge that there would be considerable inconvenience in having such a distinction. But he preferred to put it on the broad ground that, if you had native Covenanted Civil servants, you ought not to bar them from exercising the powers of a Civil servant, among which powers is the jurisdiction of a justice of the peace over European British subjects. By Act II. of 1869 natives might be appointed justices of the peace, and on what ground, he would ask, was it proposed to restrict their powers as justices of the peace ?

"Sir George Campbell was of opinion that the Council should adhere to the decision which had been come to by the passing of Act II. of 1869, namely, that a justice of the peace must be either a European British subject or a Covenanted Civil servant. To reopen that question, and to limit the powers that might be exercised by any justices who were Covenanted Civil servants, appeared to his Honour to be somewhat invidious, and would be, as it were, setting themselves against the policy hitherto pursued. Viewing the matter in that light, he should be inclined to vote for the motion before the Council.

"The Commander-in-Chief said that the native members of the Covenanted Civil Service having been to Europe, having become acquainted with European feelings, ideas and customs, and having qualified themselves to take their places with European members of the Civil Service, his Excellency would frankly accept them as real members of the Covenanted Civil Service, and allow them to exercise all the functions which the European members exercised.

"Lord Napier of Murchistoun said that his vote would be given in conformity with the opinion which had been expressed by the Commander-in-Chief. His Excellency thought that the restriction would embody a stigma on the native community in general. It was equivalent to stating that, under no circumstances, as far as the administration of the law was concerned, could the native attain to that degree of impartiality and courage which would justify the Government in reposing in his hands the power of trying European British subjects. He thought that by the restriction we, in effect, said to the European : ' You are not to be tried in the mufassal by the agency by which you are tried in the High Courts and in the courts of the magistrates in the Presidency towns, with the general approval and sanction of the European and native communities.' It was saying, in effect, that the native who had attained to the position of a sessions judge was not competent to try a European British subject, but that he might try him when he became a judge of the High Court and sat beside a European judge. His Excellency could not but help thinking that there was practically no greater disparity in permitting these native Civil servants to try a European British subject, than in permitting native justices in the Presidency towns to try him. There appeared to his Excellency to be no such broad distinction whatever between the conditions of society and of public opinion in this respect between the Presidency towns and the mufassal. There were now a great number of public-spirited men and a great deal of public spirit all over the provinces. Communications by rail, the dissemination of newspapers both in English and the vernacular, and a great variety of other circumstances, had destroyed that distinction which formerly existed between the Presidency towns and the mufassal. His Excellency did not himself consider that there was the slightest possibility that, in the rare case of a civil and sessions judge trying a European British subject in the mufassal, there would be an abuse of justice.

"Sir Barrow Ellis said that he desired to add his testimony to the efficiency with which native magistrates had performed their duties in the Presidency towns, in the administration of justice to both Europeans and natives, and he had no hesitation in saying that they had performed their duties with as much credit and efficiency as the European magistrates. And, if they had done that, he saw no reason why natives in the position of Covenanted Civil servants or sessions judges should not be equally competent to administer justice to the European in the mufassal. His honourable friend Mr. Stephen had remarked that in this matter we were not to consult the feelings of the judge, but of those who were to be subjected to the jurisdiction. In answer to that, Mr. Ellis would say that he saw no reason why that which did not hurt the feelings of Europeans in the Presidency towns should hurt them in the mufassal.

"And finally, Sir Richard Temple said he thought that the inference was undeniable that, if the natives were eligible to all the great offices of the administration, it seemed improper and unreasonable to say that they should not sit as judges over Europeans in the mufassal for offences of the trivial nature over which it was proposed to give justices of the peace cognisance.

"However, as I have said, these views, though they commended themselves to the majority of the Executive Council, did not commend themselves to the majority of the Legislature, and the amendment proposed by Sir Barrow Ellis was lost.

"It was not to be expected that a decision which avowedly proceeded on the terms of a compromise, and against which such a formidable weight of official authority was arrayed, should be accepted as a permanent settlement of the question. It has not been so accepted. Whenever proposals have been made for amending the Criminal Procedure Code, the attention of the Government has been directed to the anomalous position in which native members of the Covenanted Civil Service have been left by the legislation of 1872. In the early part of last year, Mr. Gupta, a native member of the Bengal Civil Service, submitted to the Lieutenant-Governor of Bengal a note in which he pointed out that the existing law, if maintained, would give rise to an invidious distinction, and to very practical inconveniences in the case of those natives of the country who might expect in course of time to attain to the position of a district magistrate or of a sessions judge. I may add that the anomalous nature of the present arrangements could not be better illustrated than by Mr. Gupta's own case. He officiated for some time as presidency magistrate here in Calcutta, and, while so officiating, he had, under the law as it stands, full powers over European British subjects even in comparatively serious cases, and exercised those powers to the satisfaction of the local Government and the public. On his removal to a more responsible appointment in the interior, he ceased to be qualified to deal with even the most trivial cases affecting Europeans. Mr. Gupta's proposal was that the law should be amended by extending the jurisdiction over European British subjects to natives of this country holding the office of district magistrate or of a sessions judge, and he suggested that the amendment might be made in the Bill which has since become law as the Criminal Procedure Code of 1882. However, that Bill had then nearly reached its final stage, and it was obvious that a question which was of such importance and difficulty, and about which it would be impossible to take action without consulting both local Governments and the Secretary of State, could not with propriety be raised at so late a stage of the discussion on the Bill. In this, as in other matters, the Government had, as was pointed out last year by my friend Major Baring, to choose between, on the one hand, passing the new Code, with the amendments which had been generally accepted,—amendments which were of considerable importance,—or, on the other hand, postponing the Code, with all its improvements of form and substance, until all possible amendments of the law had been put together and considered.

"Of these two courses, the Government adopted—and, I think it will be generally agreed, wisely adopted,—the latter taking care, however, to make it clear that, whilst re-enacting, for the purpose of consolidation, certain provisions of the existing law, they were not to be considered as expressing an opinion that these provisions might not with advantage be amended.

"This was Sir Ashley Eden's own view, and accordingly he postponed the submission of Mr. Gupta's note to the Government of India until the new Criminal Procedure Code had become law. But, when he did submit it, he accompanied it with a strong expression of opinion as to the expediency of altering the law in the direction indicated by Mr. Gupta. He remarked that, as a question of general policy, it seemed to him right that covenanted native civilians should be empowered to exercise jurisdiction over Europeans as well as over natives who are brought before them in their capacity as criminal judges. Now that native covenanted civilians might shortly be expected to hold the office of district magistrate or sessions judge, it was also, as a matter of administrative convenience, desirable that they should have the power to try all classes of persons brought before them. Moreover, if this power was not conferred upon native members of the Civil Service, the anomaly might be presented of a European joint magistrate who is subordinate to a native district magistrate or sessions judge being empowered to try cases which his immediate superior cannot try. Native presidency magistrates within the Presidency towns exercise the same jurisdiction over Europeans that they do over natives, and there seems to be no sufficient reason why covenanted native civilians, with the position and training of district magistrate or sessions judge, should not exercise the same jurisdiction over Europeans as is exercised by other members of the service.

“For these reasons, Sir Ashley Eden was of opinion that the time had arrived when all native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXIII of the new Code of Criminal Procedure, or when at least native covenanted civilians who have attained the position of district magistrate or sessions judge should have entrusted to them full powers over all classes, whether European or native, within their jurisdiction.

“Before taking any further action in the matter, the Government of India considered it desirable to ascertain the views of local governments and administrations as to the expediency of the amendments suggested by Sir Ashley Eden; and accordingly they addressed a circular letter to the several local governments, inviting a confidential expression of opinion on those suggestions. The result was remarkable. There was an overwhelming consensus of opinion that some change in the law was required, and that the time had come for removing the present absolute bar on the investment of native magistrates in the interior with powers over European British subjects. As to the precise extent to which the law should be modified, there was, as might naturally be expected, some difference of opinion; but it was generally admitted that a native civilian in the position of a district magistrate or sessions judge should have equal powers with his European colleagues, and there was a very strong body of opinion that there should be no distinction made between native and European members of the Covenanted Civil Service at any step in respect of their judicial powers, provided that they were individually found qualified to exercise those powers.

“Under these circumstances, it has become abundantly clear that the existing law cannot be maintained, and the only question which we have to consider is not whether the law should be altered, but how it should be altered. In approaching this question there is one consideration of which we must not lose sight, and of which it is not likely that we should lose sight, and that is, that this is a subject with respect to which it is eminently undesirable to avoid constant tinkering of the law. The settlement arrived at in 1872 may not have been satisfactory,—I do not myself think that it was satisfactory,—but, such as it was, we should not be justified in reopening this difficult question unless we saw our way to a solution which should be, I will not say final—for nothing in legislation is absolutely final—but which should contain in itself the elements of stability and durability. Can we find any such solution? If we look the question fairly in the face, and endeavour to realise distinctly the object at which we ought to aim and the facts with which we have to deal, I think that we can. As to the object at which we ought to aim, there will be no difference of opinion. It is simply the effectual and impartial administration of justice. And as to the facts with which we have to deal, no one who has studied the statistics and reports of the cases involving charges against European British subjects can fail to be struck with two things—first, that, as compared with the great mass of ordinary criminal business, they are exceptionally rare, and secondly, that they are exceptionally troublesome and difficult. To what conclusion do these two peculiarities point? They appear to me to show that, in the interests of the effectual and impartial administration of justice, it is not necessary, and that, in the same interests, it is not desirable, to clothe all magistrates indiscriminately with the power of dealing with these cases. As we are justified in excluding from the jurisdiction of inferior magistrates as such the cognizance of the graver classes of offences, so we should be justified in excluding from their jurisdiction the cognizance of a class of offences the trial of which, from the circumstances under which they are ordinarily committed, presents features of exceptional difficulty. It involves no disrespect to the magisterial or judicial office to say that an officer who may be fully competent to dispose of a common case of theft or assault may not be competent to dispose of a class of cases which, as will be admitted by all impartial persons, are apt to put an exceptionally severe strain on the judicial qualities of tact, judgment, patience, and impartiality. We are, therefore, I conceive, fully justified, on principles of general applicability, in confining the jurisdiction exerciseable in this particular class of cases to a specified class of magistrates; and the further question which we have to determine is, how this class is to be defined. My answer is, that the line ought to be drawn with reference to the presumable fitness of the magistrate, and with reference to that alone, and that we ought not to base any difference which we may think fit to make between particular classes of magistrates on race distinctions, which are as invidious as they are unnecessary.

“These are the principles by which we have been guided in framing the proposals which I am now asking leave to lay before the Council. We are of opinion that the time has come when the settlement which was arrived at in 1872 may with safety, and ought in justice, to be reconsidered; we are of opinion that, if this question is reopened, it ought to be settled on a permanent and stable foundation; and, finally, we are of opinion that

no change in the law can be satisfactory or stable which fails to remove at once and completely from the Code every judicial disqualification which is based merely on race distinctions.

"Accordingly, we propose to amend the law, first, by repealing the words which confine the exercise of jurisdiction over British subjects to persons who are European British subjects themselves; secondly, by declaring that every district magistrate and sessions judge shall be, by virtue of his office, a justice of the peace, and, as such, capable of exercising jurisdiction over European British subjects; and thirdly, by empowering local governments to invest with the office of justice of the peace, and consequently with jurisdiction over European British subjects, any person who, being either

- (a) a member of the Covenanted Civil Service,
- (b) a member of the Native Civil Service constituted under the statutory rules,
- (c) an assistant commissioner in a non-regulation province, or
- (d) a cantonment magistrate,

is for the time being invested with the powers of a magistrate of the first class, and is, in the opinion of the Lieutenant-Governor, fit to be entrusted with those further powers. We propose to make no distinction in the law between European and native officers. We consider that the care exercised in the selection of officers for the Covenanted Service, both in regulation and non-regulation provinces, together with the subsequent training that they receive, warrants our amending the law in the manner proposed. As a fact, no officer would be eligible until he had passed all the departmental examinations and been in training long enough to show the superior authorities whether he would be likely to use any powers conferred on him with proper discretion. These proposals will completely remove from the law all distinctions based on the race of the judge. The limitations remaining on the jurisdiction of particular classes of magistrates will be based, not on any difference of race, but simply on differences of training and experience.

"These, then, are our proposals. I repeat that, in making them, the only object which we have in view is to provide for the impartial and effectual administration of justice. It is by that test that we desire our proposals to be tried. If they are tried by that test, I am not without a confident hope that they will commend themselves both to the European and to the Asiatic subjects of Her Majesty as reasonable and just."

The Honourable Mr. Evans said that he was not well acquainted with the rules of debate in the Council, but wished to know whether the principle of this measure should be debated on this occasion, when leave was asked to introduce a Bill, or whether the measure should be debated at a later stage. Most of the non-official members of the Council were in the same position as himself, and had heard to day, for the first time, what the proposed measure was. It was, no doubt, one which had been often debated and was a vexed question. As had been pointed out, it was settled by a compromise in 1872, and Mr. Evans would also point out that there was nothing which was more dear to any man, and more especially to an Englishman, than his liberty, and nothing which he was more jealous of than any change in the tribunal which could deprive him of that liberty in a moment. He might also point out that, when an Englishman came into a tropical country, a sentence of imprisonment on him in certain seasons and places meant almost certain death. He did not propose now to discuss the principles of the settlement which it was now proposed to come to. He thought that the able speech in which it was introduced and the grave matters which were set forth in it deserved full consideration, and he did not think he would be justified in propounding any views of his own on the subject at once. But time should be given to the non-official community, considering that the question of the tribunal was one of the greatest importance, far greater than any question concerning the law of property and other such matters. Under these circumstances, he would ask his Lordship if he considered it was convenient to debate the principle of the Bill on the motion for leave to introduce it, then that the motion should be postponed so as to give time to the non-official English community in India, which was scattered far and wide in the various provinces, to make their voices heard, or, at any rate, that it should be postponed to-day, as he felt he could not give full consideration to it that day.

His Excellency the President said:—"Nobody is pledged in the smallest degree by the introduction of this or any other Bill, and it would obviously be very unfair that honourable members of Council should be called upon to express an opinion on the principle of a Bill which they have not seen. Nothing could be more lucid than the statement made by my honourable and learned friend who proposes to introduce the Bill, but,

until the Bill itself is in the hands of the public, it would be unfair, both to them and to the Government, that any opinion should be expressed upon it, or that any discussion should take place upon the measure in this Council.

"No one knows better than my honourable and learned friend Mr. Evans how difficult it is to understand a Bill, even with the clearest explanations of its provisions, until you have the Bill itself before you; and the public are sometimes perhaps a little too much inclined to criticise by anticipation measures of which they know nothing and have seen nothing; and I myself should not be in the smallest degree inclined to give any sort of encouragement to a procedure which, as I have said, is unfair both to the Government and to the public.

"I need not, I am sure, say that the Government has no desire to push this matter forward without giving full time for its consideration.

"The proper occasion, I think, for discussing the principle of the Bill will be on its reference to a Select Committee.

"I look upon that stage of the procedure as standing in the place of what is called 'the second reading' in Parliament at home. In the House of Lords, a Bill is often brought in and put on the table without saying a word; in the House of Commons, this is not the case, but the occasions on which discussions arise on the introduction of a Bill are rare, and debate on the principle of the measure takes place on the second reading.

"What I would, therefore, suggest would be that leave should now be given to bring in this Bill; that it should be brought in at the next meeting of the Council, and then published; and that due time should be given, before the motion is made for its reference to a Select Committee, in order to enable members of Council to consider it when they receive it in print, and to be prepared to discuss it fully after they have acquired a perfect knowledge of its provisions."

Mahārājā Sir Jotindra Mohan Tagore having asked permission to address the Council on the subject of the Bill, his Excellency the President remarked:—

"Although, according to strict rule, the Mahārājā has lost his turn for speaking, I am sure that this Council would wish me to give him leave to address them. And, in doing so, I should like to take the opportunity of expressing the great regret I feel that this, I believe, is the last occasion on which we shall have the presence in the Council of our honourable colleague Mahārājā Sir Jotindra Mohan Tagore. During the long period of his service in the Legislative Council, the Mahārājā has distinguished himself by his fairness, his enlightened views and his remarkable courtesy towards all the members of this Council.

"The Government of India have derived very great advantage from the presence of my honourable friend in the Council, and it is a source of deep regret to me that the fair rule of giving a chance to others to take their place in this Council, and, therefore, of not unduly prolonging the presence in it of any one particular member, added to the Mahārājā's own desire to be relieved of duties which clash with his other engagements, have necessitated his retirement, and occasioned the great loss to the Council which must result from his absence from it."

The Honourable Mahārājā Sir Jotindra Mohan Tagore said:—"My Lord, I have listened with great interest to what has been said by my honourable and learned colleague opposite, and, as this may be the last occasion, as your Lordship has observed, on which I shall have the honour of addressing this Council, I beg leave to take this opportunity of offering, on behalf of my countrymen, their grateful thanks to your Excellency for redeeming the promise, which was held out to them during the last session of the Council, to amend that portion of the Criminal Procedure Code which relates to the trial of British-born subjects. Although it is impossible to say anything with regard to the details of the Bill before it is introduced, the very fact that something will be done now to remove the anomaly which has been a source of standing complaint with my countrymen for a very long time is in itself a matter for congratulation. Knowing the broad and statesman-like views which have characterised your Lordship's government, we have every reason to hope that legislation in this direction will be of a piece with those other great measures of reform,—among which I may name the repeal of the Vernacular Press Act, and the Act which, for the first time, has introduced the principle of self-government in this country,—which we feel sure will mark your Lordship's administration as an epoch in the annals of British India; and I am free to confess, my Lord, that, on this closing day of my humble career in this Council, I feel an honest pride that I have had the good fortune to occupy a seat here while these great measures

have been either passed or initiated under the auspices of your Excellency's liberal government.

"And I take this opportunity, my Lord, to tender my own most hearty and grateful thanks for the very kind manner in which your Excellency has been pleased to speak of my humble services in this Council."

The motion was put and agreed to.

ABSTRACT of the PROCEEDINGS of the COUNCIL of the GOVERNOR-GENERAL of INDIA, assembled for the purpose of making LAWS and REGULATIONS under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th February 1883.

PRESENT :

His Excellency the Viceroy and Governor-General of India, K.G., G.M.S.I., G.M.I.E., presiding.

His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Honourable J. Gibbs, C.S.I., C.I.E.

Major the Honourable E. Baring, R.A., C.S.I., C.I.E.

Lieutenant-General the Honourable T. F. Wilson, C.B., C.I.E.

The Honourable C. P. Ilbert, C.I.E.

The Honourable Sir S. C. Bayley, K.C.S.I., C.I.E.

The Honourable C. H. T. Crosthwaite.

The Honourable Rájá Siva Prasád, C.S.I.

The Honourable W. W. Hunter, LL.D., C.I.E.

The Honourable Durgá Charan Láhá.

The Honourable H. J. Reynolds.

The Honourable H. S. Thomas.

The Honourable G. H. P. Evans.

The Honourable R. Miller.

The Honourable Kristo Dás Pál, Rai Bahádur, C.I.E.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Honourable Mr. Ilbert introduced the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects. He said that the step which he was then taking was purely formal. He would not invite the Council to discuss the principle of the Bill until full time had been given for its consideration by the outside public.

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EAST INDIA (NATIVE JURISDICTION OVER BRITISH SUBJECTS).

- FURTHER PAPERS RELATING TO THE CORRESPONDENCE, &c. IN RESPECT TO THE JURISDICTION OVER EUROPEAN BRITISH SUBJECTS: COPY OF THE TELEGRAPHIC SUMMARY, FURNISHED TO REUTER'S AGENCY BY THE GOVERNMENT OF INDIA, OF THE DEBATE OF THE 9TH MARCH ON THE PROPOSED ALTERATIONS IN THE CODE OF CRIMINAL PROCEDURE.

India Office,
8th June 1883. }

J. K. CROSS,
Under Secretary of State for India.

Presented to both Houses of Parliament by Command of Her Majesty.



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1883.

[C.—3655.] Price $\frac{1}{2}d$.

THE INDIAN NATIVE JURISDICTION BILL.

(REUTER'S TELEGRAM.)

CALCUTTA, March 9.

THE Bill relating to the jurisdiction of native magistrates over European British subjects in India came before the Council to-day, on the motion of Mr. Ilbert for its publication. It was explained that it did not originate with Mr. Ilbert, but was suggested by a letter from Sir Ashley Eden, and introduced after the whole Council had taken into consideration the opinion of the local governments. It was further pointed out that it left untouched the limitations on sentences which might be passed on European subjects of the British Crown by the Mofussil Courts, the right to trial by mixed jury, and the right to apply for release from illegal custody. It merely substituted for the disqualification arising from race, a qualification depending on tried personal fitness. Speeches were made in support of the Bill by various members of the Executive Council and by the following independent members, viz., Mr. Quinton, Rai Bahadur Kristodas Pal, Durga Charan Laha, Sayyad Ahmed Khan Bahadur, and Messrs. Reynolds and Hunter. The following spoke in opposition :—Messrs. Miller and Evans, Rajah Siva Prasad, Mr. Thomas, and the Lieutenant-Governor of Bengal. The last named, though opposing the Bill, suspended his final opinion until after consultation with his officers. Messrs. Hunter and Gibbs cited instances showing that grave administrative inconvenience would arise unless the Bill was carried, as the native civil servants, not being competent to try European British subjects, would be excluded from all the more desirable districts. Sir Donald Stewart, the commander-in-chief, and others pointed out that the Bill was merely a permissive measure, which would be put in force tentatively by degrees. Moreover, the powers under it would be conferred only on natives of approved fitness. As regarded the apprehension that it might be merely the thin edge of the wedge, Sir Stewart Bayley stated it was meant to be final, and no further steps in the same direction were contemplated. Lieutenant-General Wilson stated that he was the one member of the Government who had throughout opposed the amendment. He still considered it unnecessary and impolitic, but he strongly condemned the violent language used regarding it, and the personal attacks made on his colleagues in connexion with the Bill. Both he and Sir Donald Stewart expressed warm disapproval of the efforts made to excite the volunteers and British troops. The opposition to the Bill was based chiefly on the ground that it would tend to create hostility between the natives and Europeans, that it would expose isolated Europeans up-country to the risk of having false charges brought against them and tried by native judges ignorant of European ways; and that it would thus keep European capital away from India. It was explained that the Government would be ready to consider fully any arguments brought against the Bill before the next cold weather, and that all the local governments would be consulted on all its details before anything was done. The Marquis of Ripon explained the circumstances under which the Bill had been brought in, and stated that during March of last year Sir Ashley Eden, the Lieutenant-Governor of Bengal, sent a letter to the Indian Government, in which he gave it as his opinion that the time had arrived when all natives, being covenanted civil servants, should be released from the restrictions placed upon their powers by Chapter 33 of the Criminal Procedure Code. On receipt of this letter, the Government consulted all the local governments in India, and their replies showed them, with the single exception of Coorg, to be in favour of a change in the existing law in the direction indicated by Sir Ashley Eden. There was a division of opinion on the subject within the Madras Government itself, but the Bombay Government was unanimous. The question was then referred, in September last, by the Indian Government to Lord Hartington, who very carefully considered it in Council and sanctioned the alteration of the law embodied in the present Bill. The Viceroy then pointed out that, with the exception of a special provision for non-regulation provinces, the Bill only proposed to confer jurisdiction over British subjects on native members of the covenanted service. Of these a certain number were now beginning to rise to the high judicial positions of sessions judges and district magistrates, while under the new system introduced by Lord Lytton's Government in 1879, in a certain number of years *the whole covenanted service** would consist of natives. When

* The words used by Lord Ripon were "one-sixth of the whole covenanted service." The omission was due to a clerical error.

this occurred it would be obviously impossible on the simple ground of administrative convenience to continue the existing restrictions. In the first instance, the Bill would have very limited scope. Indeed, if it passed now, only two gentlemen would obtain powers under it, and not more than four or five in the course of the next few years. The most plausible argument against making a change in the law now was that the effect would be so small; but the Viceroy argued that as a change must inevitably be made on the grounds of administrative convenience and justice to suitors before many years had passed, it was wiser and more prudent to introduce it now when it could be brought into operation gradually and cautiously, when its working could be easily watched, and when the persons on whom it would confer jurisdiction were men of ability who had got into the service by competition at home, and who would set a good example to their successors rather than wait till administrative necessities forced the Government to make the change much more suddenly and extensively. The opposition to the Bill was really more an opposition to the declared policy of Parliament, as to the admission of natives to the covenanted civil service than to this particular measure. Lord Lytton's new rules made the change inevitable at no distant time. The Bill touched none of the special privileges of British subjects which were numerous, except the single one of not being tried for a criminal offence by any native judicial officer in the Mofussil, however high his position. The supervision of the high courts over all courts below was by itself sufficient to ensure that if any native judge misconducted himself he would be immediately called to account. The Indian Government were perfectly ready to consider and weigh any reasonable objections or legitimate arguments against the Bill, but they could not listen to violence or misrepresentation. The Government were bound to take a wider view of every question than the single interest of any class, but the objections of any class specially affected by any particular measure were always entitled to special consideration. Arguments inconsistent with the declared policy of Parliament about the admission of natives to the civil service the Government could not accept, but all fair reasons against the Bill would be thoroughly considered by himself and his colleagues. The opponents of the Bill spoke of appealing to the Government at home and the House of Commons. It was their constitutional right to do so, and to the decision of those authorities both parties to this controversy would be forced to bow. Plenty of time would be afforded between now and next November for a full examination of any representations which might be made in connexion with the Bill.

EAST INDIA (NATIVE JURISDICTION OVER BRITISH SUBJECTS).

FURTHER PAPERS ON THE SUBJECT OF THE PROPOSED ALTERATION OF THE PROVISIONS
OF THE CODE OF CRIMINAL PROCEDURE WITH RESPECT TO JURISDICTION OVER
EUROPEAN BRITISH SUBJECTS.

India Office,
28th May, 1883. }

J. K. CROSS,
Under Secretary of State for India.

Presented to both Houses of Parliament by Command of Her Majesty.



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1883.

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ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE
GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE
PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE
PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VICT.,
CAP. 67.

The Council met at Government House on Friday, the 9th March 1883.

PRESENT :

His Excellency the VICEROY AND GOVERNOR GENERAL OF INDIA, K.G., G.M.S.I.,
G.M.I.E., *presiding*.
His Honour the LIEUTENANT-GOVERNOR OF BENGAL, C.S.I., C.I.E.
His Excellency the COMMANDER-IN-CHIEF, G.C.B., C.I.E.
The Hon. J. GIBBS, C.S.I., C.I.E.
Major the Hon. E. BARING, R.A., C.S.I., C.I.E.
Lieutenant-General the Hon. T. F. WILSON, C.B., C.I.E.
The Hon. C. P. ILBERT, C.I.E.
The Hon. Sir S. C. BAYLEY, K.C.S.I., C.I.E.
The Hon. T. C. HOPE, C.S.I., C.I.E.
The Hon. RÁJÁ SIVA PRASÁD, C.S.I.
The Hon. W. W. HUNTER, LL.D., C.I.E.
The Hon. SAYYAD AHMAD KHÁN BAHÁDUR, C.S.I.
The Hon. DURGÁ CHARAN LÁHÁ.
The Hon. H. J. REYNOLDS.
The Hon. H. S. THOMAS.
The Hon. G. H. P. EVANS.
The Hon. R. MILLER.
The Hon. KRISTODÁS PÁL, RAI BAHÁDUR, C.I.E.
The Hon. J. W. QUINTON.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon. Mr. ILBERT also moved that the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and Statement of Objects and Reasons, be published in the *Gazette of India*, and in the local official Gazettes in English and in such other languages as the Local Governments might think fit. He said :—

“ This publication is a necessary stage—and it clearly ought to be an early stage—in the progress of a Bill ; but, under the Rules of Business as they stood before the recent alteration, the Council could not have ordered the publication of a Bill until a motion that it be referred to a Select Committee or some equivalent motion had been put and carried. However, under the new rule which was passed the other day, the Council may direct the publication of a Bill at any time after leave to introduce it has been granted. The effect of passing this motion, which I now make, will be that this Bill will be published in the usual manner, and that the various Local Governments will have the same opportunity of expressing their opinions on the provisions of this Bill as they have of expressing their opinions on the provisions of any other Bill.

"I give these explanations for the purpose of correcting some misstatements which have been made with respect to the course which the Government have adopted, and proposed to adopt, in dealing with this measure. It has been alleged that we are pushing the Bill through the Council with unusual and improper haste. There is no foundation for this statement. The Government never intended to pass the Bill into law during the course of the present Calcutta session. They have dealt, and they always intended to deal, with this measure in accordance with the ordinary rules of business; and, in dealing with it, they have not departed from the usual course of procedure, except in one particular, namely, that, in order to give the public the earliest possible notice of the nature of their proposals, they sent copies of the Bill and the accompanying papers to some of the leading Journals before any formal order for publication of the Bill had been made by this Council.

"To substantiate this statement let me recapitulate shortly the several stages through which this measure has passed, both before and since its introduction as a Bill into the Council. It originated with a proposal for legislation which was made by the Government of Bengal to the Government of India in the month of March 1882. That proposal was, in the month of April last, communicated in the ordinary way to other Local Governments for their opinions. On receipt of those opinions, the Government of India considered whether legislation should be undertaken, and, if so, what form it should take. Having come to a conclusion on these points, they submitted their proposals—the proposals which are embodied in the present Bill—to the Secretary of State in Council. The then Secretary of State, Lord Hartington, informed us that these proposals had been very carefully considered by him in Council, that he agreed in the conclusions at which we had arrived, and that he sanctioned the introduction of a Bill embodying the proposals which we had submitted. Accordingly, the Home Department issued instructions to the Legislative Department to frame a Bill, and the Bill, when framed, was placed in charge of the Legal Member of Council, who, I believe, always takes charge of Bills amending the Procedure Codes. I obtained leave to introduce the Bill on the 2nd of February, I introduced it in the following week, and the papers containing the opinions of Local Governments were, I believe, sent to the newspapers within three days after the introduction of the Bill. Since then the Bill has not been carried through any further stage.

"It has been also alleged that the Bill originated in the opinion of an adviser not sufficiently acquainted with the circumstances of Indian life, the reference being obviously to myself. Now, I do not wish to disclaim or lessen in any way my share of responsibility for this measure, but to say that it originated in any opinion given by me is to say what is not in accordance with the facts. The letter of Sir Ashley Eden was received by the Government of India before I landed in this country. It was sent round to the various Local Governments before I took my seat as a Member of this Council, and I never heard anything about the subject at all until after the replies of the Local Governments had been received by the Government of India. My duty then was simply to form the best conclusion I could after seeing what had been written on the subject, and hearing what was said on the subject, by persons who had an acquaintance with the country which I never affected or claimed to possess. The conclusion to which I came on the materials before me was, that we ought to legislate, and that we ought to legislate on the lines on which this Bill has been framed. That opinion I still hold. But the Bill is the Bill, not of the Legal Member of Council, but of the Government of India, and, that being so, it will, I think, be more meet that I should, on the present occasion, leave to the Head of the Government the task of explaining the policy of what is a Government measure.

"Accordingly, I shall confine myself exclusively to the legal aspect of the measure. But I do not intend to waste your time by reference to any of the so-called legal arguments purporting to show that we have no power to alter the law in the mode in which we propose to alter it. I do not anticipate that my honourable friend Mr. Evans will venture to use any such argument. He is much too good a lawyer to do so. For he knows as well as I do that about the legal power of the Legislative Council to pass this Bill there is not, and cannot be, any question.

"What I propose to do is to give you a dry simple statement showing the jurisdiction which is, under the existing law, exerciseable by the Courts of this country in cases affecting European British subjects, and the mode in which it is proposed to alter that law by the present Bill. It is necessary that I should do this, because the scope and effect of the Bill have been much misunderstood or misrepresented, and I observe that an important London paper has alleged that we are running atilt against a rule which, as a matter of fact, we do not propose to touch, the rule, namely, which limits the extent

of the criminal jurisdiction exercisable by Magistrates in the mufassal over European British subjects.

“Let me begin by explaining what is meant by a European British subject. The term ‘European British subject’ is defined by the Criminal Procedure Code (section 4) to mean—

- ‘(1.) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain or Ireland, or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;
- (2.) any child or grandchild of any such person by legitimate descent.’

“It will be seen that the definition is somewhat arbitrary and artificial. It includes persons who are neither European nor British. It excludes persons who may be in all essential characteristics Englishmen, but who are not of legitimate descent.

“Such being the European British subject, let us see what is the nature and extent of the jurisdiction exercisable over him in this country in civil and criminal cases.

“First, then, as to the jurisdiction exercisable over European British subjects in civil cases. That jurisdiction is precisely the same as that which is exercisable in the case of persons not being European British subjects. Section 10 of the Civil Procedure Code enacts that—

‘no person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of the Courts.’

“No person is exempted from that jurisdiction by reason of his being a European British subject; no person is disqualified for exercising that jurisdiction by reason of his not being a European British subject. A Native Judge has the same civil jurisdiction over a European British subject as any other Judge, and may exercise that jurisdiction in such a way as to affect not only his property, but his reputation and his person. He can give judgment against him in a suit for fraud or libel; he can send him to prison for debt; can punish him for contempt of Court; and can issue a warrant for his arrest in case of his non-attendance as a witness.

“So much as to jurisdiction in civil cases. Next, as to jurisdiction in criminal cases. I will deal first with the jurisdiction of the High Courts, including in that expression, not only the High Courts at the Presidency-towns of Calcutta, Madras, and Bombay, but the High Court at Allahabad and the Chief Court of the Panjáb at Lahore. The criminal jurisdiction of these Courts is unlimited. No person is exempted from it by reason of race or place of birth. No person is disqualified for exercising it by reason of race or place of birth. Any person may exercise the jurisdiction, whether he is a European British subject, or a Native of India. And a Judge of the High Court, whether he is a European British subject or not, is by virtue of his office a Justice of the Peace within and for the whole of British India.

“Then, as to Presidency Magistrates. Here, again, there is no exemption, no disqualification, based on race or place of birth. Any Presidency Magistrate, whether a Native of India or not, can try or commit for trial any European British subject, and can pass any of the following sentences:—

- (1.) Imprisonment for a term not exceeding two years, including solitary imprisonment;
- (2.) Fine not exceeding one thousand rupees;
- (3.) Whipping.

“Lastly, as to the criminal jurisdiction of ordinary Magistrates and Judges in the mufassal. Here there are distinctions between cases affecting European British subjects and other cases, both as to the extent of the jurisdiction which may be exercised, as to the privileges of persons subject to that jurisdiction, and as to the persons qualified to exercise the jurisdiction.

“As to the extent of the jurisdiction. A Magistrate cannot sentence a European British subject to more than three months’ imprisonment, or Rs. 1,000 fine, or both. A Court of Session cannot sentence a European British subject to more than a year’s imprisonment, or fine, or both. And neither a Magistrate nor a Court of Session can sentence him to the punishment of whipping.

“Then, the European British subject has certain special privileges as to the mode of trial, the right of appeal, and the right to apply for release from custody.

“He may claim to be tried by a mixed jury or a mixed set of assessors, not less than half the number of jurors or assessors being either Europeans or Americans, or both Europeans and Americans.

"If he is convicted on a trial held by an Assistant Sessions Judge or a Magistrate he may appeal either to the High Court or to the Court of Session at his option. He can appeal against small sentences of fine or imprisonment from which there is no right of appeal in ordinary cases, and if he is unlawfully detained in custody he can appeal to the High Court for an order directing the person detaining him to bring him before the High Court.

"And lastly, he cannot be tried by any Magistrate unless the Magistrate is a Justice of the Peace, a Magistrate of the first class, and a European British subject; he cannot be tried by any Sessions Judge unless the Judge is a European British subject; and he cannot be tried by any Assistant Sessions Judge unless the Judge is a European British subject, has held the Office of Assistant Sessions Judge for at least three years, and has been specially empowered by the Local Government to try European British subjects.

"The privilege of being tried by a mixed jury, or mixed assessors, belongs to all Europeans and Americans; the privilege of being tried by a European British subject, belongs to the European British subject alone. Now, of all these various rules, the only one which we propose to alter is that which relates to the race qualification of the Judge. We have left untouched the limitations on the sentences which may be inflicted by the Judge. We have left untouched the right to trial by a mixed jury or by mixed assessors; we have left untouched the right to apply for release from illegal custody. The single alteration which we propose to make is this. We propose to substitute, for the disqualification arising from race, a qualification depending on tried personal fitness. We propose to say that a very small number of specially selected Native Magistrates may exercise that limited and qualified jurisdiction which can at present be exercised only by persons who fall within the extremely arbitrary and technical definition of European British subjects."

The Hon. Mr. QUINTON said:—"It cannot be denied by the most earnest opponents of the present Bill that there is a strong array of official opinion in support of it. The measure which it embodies originated with the Government of Bengal. The Governments of Bombay, Madras, the North-Western Provinces and the Panjáb, the Chief Commissioners of the Central Provinces, of British Burma and of Assam, and the Resident at Haidarabad, who is *ex officio* Chief Commissioner of the Haidarabad Assigned Districts, have all written in no qualified terms expressing their approval of it on the grounds of public policy and administrative convenience.

"It is unquestionable that the Bill, if passed into law, will deprive the European British subject in the interior of being tried in certain cases by a Magistrate or Judge of his own race. I say 'in certain cases,' for as the law at present stands, there is nothing, should he be unfortunate enough to be committed to the High Court, to prevent his being tried by a Native Judge of that tribunal. Whether this partial deprivation of a peculiar privilege be one which State policy and the interests of good administration demand, is the question this Council has now to determine—a question which the heads of all the Local Governments have answered in the affirmative.

"The policy of the British Government in India for many years has been to throw open to Natives of the country, proved to possess the necessary qualifications, offices in the public service which were at first reserved exclusively for Englishmen. The progress of education, the gradual adoption among the better classes of Natives of India of European standards of honour, integrity, and truthfulness, the increase of intelligent interest in public affairs exhibited by the leaders of Native society, have all tended to break down the barriers which obstructed their advancement to the higher appointments of the administration. Successive opportunities of such employment have of late years been afforded to Native gentlemen, which have placed within their reach seats on the benches of the High Courts, and admission to the Covenanted and Native Civil Services. This last privilege will, except in cases of manifest incapacity, lead to the bench of the Sessions Court and to the magisterial and executive charge of districts.

"It is scarcely needful for me before this Council to dwell on the importance of this charge. District-officers have been rightly called the eyes and ears of Government. They are in their districts the outward and visible representation of British authority, —often but a dim and distant shadow,—and upon their efficiency, and on the respect and confidence they inspire, depend the reputation, the influence, and, perhaps in the last resort, the existence, of British rule in India. They are entrusted with weighty judicial and executive functions, and have in their hands powers which may affect the welfare and happiness of hundreds of thousands of human beings; for they, and they only, can adequately represent and secure a hearing for the wants of their people. Similarly, Sessions Judges preside over the administration of criminal justice in areas coextensive

with, or larger than, those of districts, and have powers of trying all offences, even of a capital nature, committed by persons residing within their jurisdiction.

"To these high offices, for reasons of State policy which cannot now be questioned, Her Majesty's Government has thought it good that Natives of India should be admitted; and the Bill before the Council is only the natural outcome and complement of that policy. It simply invests the holders of them, when they happen to be other than Europeans, with powers hitherto inseparable from these offices.

"It is much to be regretted that this cannot be done without depriving Englishmen in India of a privilege, however small, which they have hitherto possessed, but that it must be done, sound policy and good administration alike seem to me to require.

"With what fairness can Government, which has held out to Natives prospects of reaching the highest posts in the public service, which induced and encouraged them to incur the labour and expense of qualifying for such appointments, turn round upon those persons now, who have satisfied all the requirements for high office, and say—'We make you Sessions Judges and Magistrates of districts, but we find you wanting, by reason of your descent, in the qualities essential to the discharge of a portion of the duties which devolve upon you in those capacities, and for the performance of those duties you must give place to others junior to you in the service'?"

"Is such treatment likely to conciliate or win public esteem and confidence for Sessions Judges and Magistrates, to strengthen their hands in the execution of their offices, or to promote that good feeling and cordiality between European and Native Civilians which are indispensable to their working efficiently together? It is obvious that it must produce effects the direct opposites of these.

"No, My Lord. I believe it is now too late to stop short. We cannot retrace our steps, and, as the change now in contemplation must be made sooner or later, and, when it is made, appears fated to arouse passions which we all deplore, the sooner it is made the better.

"The warmth of feeling which has been called forth by the publication of the Bill, and the excitement to which it has given rise, seem to me very disproportionate to the results which may be reasonably expected to flow from it. The number of Native Civilians employed under each Local Government is very small; the localities where there are persons likely to be affected by the Bill are not numerous. Years must elapse before the few Native officers to whom the Bill refers can reach the qualifying offices or prove their fitness to be nominated as Justices of the Peace; and the Local Governments have, under these circumstances, full opportunity for giving effect to the proposals under the most favourable conditions. Notwithstanding all this, it has been assumed, in the vehement discussions which have taken place outside this Council chamber, that the present proposal is one to subject European residents in the interior of the country to the jurisdiction of all Native Magistrates—an assumption altogether unfounded. No Deputy Magistrate, no Honorary Magistrate, and no Extra Assistant Commissioner, which classes comprehend nearly the entire Native Magistracy, can be nominated under the Bill.

"Similarly, much of the heated declamation which has been resounding in our ears can only spring from the idea that all distinctions of law between Europeans and Natives of India are to be abolished; but what are the facts?"

"The Bill leaves altogether unaltered the main provisions of the law, that for heinous offences European British subjects must be tried before the High Court, that for grave offences meriting a punishment of imprisonment of less than one year's duration they are to be tried before the Court of Session, and that the accused, if he pleases, can require that half the number of the jury or assessors at such trials shall be Europeans or Americans. The only change made is, that a Magistrate trying a European British subject for petty offences or inquiring into graver charges against him, and that a Sessions Judge presiding at his trial on such charges, shall not of necessity be a European, though such Magistrate, unless a Magistrate of the district, must have satisfied Government of his ability to discharge the duties of a Justice of the Peace.

"It is difficult to find any intelligible reason why an officer of sufficient judicial ability to be appointed a Presidency Magistrate should, when promoted or even transferred to a district beyond the Presidency, forfeit powers which he had been found to exercise in a satisfactory manner; or why a Native gentleman who has proved his fitness for the Bench of the Sessions Court should be declared disqualified from presiding at a trial of a European British subject, when the accused can have the advantage of a number of his countrymen on the jury or among the assessors.

"In several districts of the Lower Provinces of Bengal, where the cry of opposition has been loudest, and where the Bill, if it passes, is likely to have the most extensive operation, trials before Courts of Sessions are by jury.

"The arguments which might justly have been urged a quarter of a century ago, arising from the inaccessibility of Courts in the interior, and their seclusion from the fierce light of public opinion, were discussed and answered in the debate in this Council in 1872, in the speech of Lord Napier of Merchistoun, quoted on a previous occasion by the hon. and learned member who introduced this Bill; and, if anything further were wanted, I have but to point to the countless letters and telegrams in the columns of the newspapers arriving every day from different parts of the country, as evidence that, where Europeans in India are concerned, things cannot now be done in a corner."

The Hon. KRISTÓFÁS PÁL said:—"My Lord,—I think I would best consult the interests of the Bill if I should say as little as possible on the subject. I am convinced that I cannot do better than leave it to your Lordship, as the responsible head of the Government, to enunciate the reasons and policy of this measure. I cannot, however, allow this occasion to pass without saying that I look upon this Bill as a legitimate and logical development of the progressive policy which characterises British rule in this country, and that, its principal being sound, just, and righteous, my countrymen feel a deep interest in it.

"None, my Lord, can regret more than I do the ebullition of feeling which this Bill has caused. Considering the innocuous character of the Bill, I confess I did not expect it, nor did the Government, I believe, anticipate it. Had it not been for the great and important principal at stake, I would have been the first to counsel the withdrawal of the Bill, rather than oppose the wave of feeling which has risen against it. I have too strong a faith in the character of John Bull to believe for a moment that he will carry to the bitter end his opposition to a noble attempt to establish that equality in the eye of the law which the history of his own country, and the teachings of his own political system, so loudly proclaim. I was young when the hurricane of the Sepoy Revolt burst over the country in 1857, but I well recollect how feelings were torn asunder by the sad events of those days, how furious was the rage of denunciation, and how terrible the voice of vengeance. And yet, when the storm of the Mutiny subsided, the feeling also subsided, and not a few of those who had stood forth as uncompromising enemies of the Natives now stepped forward as zealous champions of their cause. It has been my good fortune to work with many of them, and to profit not a little by their advice, assistance, co-operation, and example. Who could for a moment say that the Anglo-Indian of the Mutiny days was the Anglo-Indian of the succeeding days of peace and progress? This is my experience of the character of honest John Bull.

"Pride of race—I use the phrase in no offensive sense—is a commendable feeling. It is an honest and honourable pride. It has been the mother of good deeds, valiant acts, patriotic exertions, and national glory. But there is a higher and nobler pride, that of fostering human happiness under beneficent law, raising the weak and lowly to the level of the strong and high, and making equal law and equal justice the basis of political paramountcy in the world. It is to that noble feeling I appeal. All Englishmen, whether in India or in England, I humbly think, should rejoice that, within the century and a quarter they have ruled India, they have effected such a complete revolution in the Indian mind, both intellectual and moral, that Indian Magistrates are found fit to be trusted with the administration of the laws of the land, not only over their own countrymen, but also over the members of the ruling race. This is a work of which England may justly feel proud—this is a consummation over which all Englishmen may well rejoice."

The Hon. Mr. MILLER said:—"My Lord, I can hardly imagine a subject likely to be brought up for discussion in this Council concerning which I should speak with greater unwillingness than this Bill. If there ever was a matter to which the proverb 'Least said soonest mended' applied, it is this one. To speak will lead to misunderstanding, and so also will the keeping silence. To the best of my judgment I choose the lesser evil, for there have been misunderstandings enough, for which, however, I cannot feel that I, or those for whom I speak, are in any way to be held responsible.

"No subject for many years has evoked in India so deep or such united feeling on the part of the European community as this Bill. In the presence of a feeling so strong, and I cannot help saying also so powerful for mischief, it is an infinite pity that a measure of this nature, which deeply affects the material interests, as well as the sentiments, of Europeans, should have been introduced without any attempt made beforehand to ascertain their views.

"The disappointment on our part would have been excited under any circumstances, but recent events intensify and attract attention to it; for we have of late been hopeful that the former policy on the part of Government, of relying solely on information derived through official channels, would be relaxed, and that the views of the non-official community would be sought for and weighed more than has been hitherto the custom, and we have been encouraged to form opinions, and at times even taunted with having none.

"The fact that a measure on which, if on no other, the European community in, and connected with, India think strongly and think together, should have been introduced without a word of warning, leads reasonably and properly to disappointment, and tends to throw discredit on the profession of Government when they say they wish to know our views.

"But, from what I and many others have seen of your Lordship and of your Lordship's Government, we are led to believe this must have arisen from some misapprehension; and that, when it is made plain that on this subject the interested class, whom alone the proposed alteration of the law would practically affect, not only have an opinion, but are practically unanimous in it, as regards this measure,—when this, the true state of affairs, is discovered,—the Government may see their way to withdraw their calamitous proposal.

"On this subject I can confidently say the European non-official community think together. I only wish there were less positive proof. I wish it were still a matter of opinion, and that the opinion alone could be accepted; for the very fact of asking the public in a public way to state their views is injurious to the best interests of India. There is hardly another subject which could call the widely scattered, in places solitary and isolated, Europeans in this country so unanimously together as a proposal to subject their personal liberty to Native tribunals in the Mufassal; for the proposal threatens them in all ways—their liberty, their reputation, and the stability of their property. The trade organisations in all parts of the country agree in this view: from Karáchi, from Bombay, although the planting interest is entirely absent in those parts of India; in Madras and Rangoon the same response is made; and in Bengal and in Southern India the Europeans in the Mufassal speak practically as one man.

"It seems to me to be altogether a fallacious argument to say that the proposal is at most a trifle. In the first place, it is not a trifle to deprive the European of his most cherished right. The first sign of an inclination on the part of Government to deprive him of his right to be tried by a fellow countryman excites him far beyond what actual immediate danger justifies; and it is not a trifle to stimulate feelings of distrust and indignation in the minds of Europeans in the country against the Government; for this indignation and distrust is not brought into effect directly against the Government, as would be the case in England, but affects rather the country itself and the Natives.

"If means were being sought to stir up and inflame those race antipathies which it is the noble ambition of your Lordship's administration to efface, a more effective one than this 'trifle' could not be found. It is not a trifle; for, if by mischance a Native Sessions Judge or a Native District Magistrate were to misjudge an European and condemn him to imprisonment on grounds which were afterwards proved to have been erroneous, it is perfectly certain that more positive, immediate, I may say instantaneous, harm would be done to this country than could be repaired in half a dozen years. It is not a trifle; for one of the most common crimes, I will not say one of the ingrained customs, of this country is the fabrication of false evidence in the Courts of law. Perhaps the hon. and learned member who introduces the Bill may think I am only uttering one of the common Anglo-Indian fossilised prejudices; but I would appeal to universal Indian experience to bear me out. False evidence is cheap. One single miscarriage of justice through the medium of false evidence sworn before a Native Magistrate will do more infinite mischief, by driving English workmen and English capital out of the country, than the united efforts of Government and of all the guarantees they can offer can repair in a quarter of a century.

"If a trifle, then, why in the name of common sense provoke all their animosity for the sake of it? It is difficult in a matter like this to appeal to experience that is purely English. This country is full of anomalies, and it is difficult for the English mind, unaccustomed to the facts of Indian life, to discover how it is that a practice which is submitted to without demur in a Presidency-town should be so bitterly resisted in the Mufassal. The answer is simple. A public opinion, a Press and legal assistance are at hand here. There, there is nothing but a Judge to condemn and a jail to confine. English enterprise—and on this side of India at least there is very little enterprise of

any kind except English—is largely concerned, and English capital largely invested in this country, especially in Bengal. The indigo factories, the tea gardens, and the consequent inducement to that migration of population which is so urgently needed in parts of India, mills and mines, are all supported by English capital, and the tendency has been to increase this. It has begun to be recognised by European capital that India most wants to buy what England most wants to sell, namely, material for increasing the trading power of the country; and a stimulus has lately, under the auspices of your Lordship's Government, been given to the inward flow of capital.

“But there is one thing that European capital will not do. It will not entrust itself to Native Indian management. It is hopeless and useless to say this is the result of prejudice. Possibly it is prejudice. But the result of the prejudice is a tangible factor, which cannot be denied, cannot be ignored, and which must in fact be acknowledged. Capitalists will not entrust their money to Native management, and they are satisfied the feeling is well founded. I will not give reasons for this, for I do not wish to give unnecessary offence, but I ask your Lordship to take note of it.

“Capital employed in the Province is invested on the faith of European agency, but such agency is expensive and is not employed in greater strength than the circumstances of the case render positively necessary. A practice exists in the Mufassal—I am not drawing on my imagination, I am not uttering an Anglo-Indian prejudice, I am stating a fact which is known to every zamindár as well as to every raiyat, to every official European equally as to non-officials who ever engaged in litigation, that the practice of bringing false charges to injure rivals or to gratify a grudge is a common practice. This is a fact of which European capital has to take account before it allows itself to be locked up in India, and capital reflects that, if an European manager is removed from the charge of the enterprise on which he is employed in the Mufassal at a critical moment and imprisoned on a false accusation, the loss and damage may be overwhelming.

“No Native criminal tribunal in the Mufassal can, under these circumstances, command the confidence of our employés. Anything that touches the personal safety of our European employés in the Mufassal reflects back again on us, and, if it threatens their safety, it deters the inflow of capital. It is said this is all prejudice. We think it to be fact. Capital is sensitive, and, when you deprive the investor of one of the safeguards on which he mainly relies, namely, the right on the part of his employés to be tried by one who, whatever may be his knowledge of the criminal law, is at least a fellow-countryman and capable of understanding, as one of ourselves, our own feelings, it is of no sort of use to assure that capitalist that what he looks upon as a safeguard is only an ‘anomaly.’

“It is only eleven years ago since Sir James Stephen addressed this Council on the same subject that is now before us; and, in allusion to the law which had then been decided upon, but which it is now proposed to alter, he used the following words:—

‘I need not remind the Council of the extreme warmth of feeling which discussion upon a measure of the nature excited at no distant date, nor need I insist on the great importance to the Government of the country of the existence of harmony between the Government and the general European population.’

“These words still hold true. In what respect have circumstances changed since they were spoken? Is a compromise in itself more objectionable now than it was then; or are the facts which rendered the whole law a tissue of compromise in any manner or in any degree of manner different?

“The Europeans who have capital in this country do not think so, and they look in vain to anything that has been stated in advocacy of the Bill for reasons which justified a change in the law. A compromise the whole law is, and a compromise it must remain until the conditions of daily life in this country render a simpler law admissible.

“Is this compromise,—the least objectionable, the least actively offensive, of any that are to be found within the four corners of the statute-book—highly valued by the section to whom it applies? We have the traders' and planters' association from every part of India answering with one voice. I think it is a most regrettable thing, the idea of being called upon to answer the question had ever to be proposed to them; but of the fact of their reply there is no sort of doubt.

“My Lord, the exasperation of race that is now going on is terrible and deplorable. Enough harm has been done, and yet the exasperation is increasing every day. It has not done so yet, but it is leading to a sense of insecurity. If the Government depart from Calcutta to Simla, leaving the population of Bengal ‘to stew in the juices of mutual animosity’ engendered by this most unfortunate proposition, the mischief, which will not

be prejudice, but a fact, not imaginary but tangible, may become beyond repair; and I call upon those of your Lordship's Council who have served their years in the country, and who have more than a theoretical knowledge of the people, to tell your Lordship frankly that I have not overstated the case. And of yourself, I would earnestly beg, in the interest of that concord between the races which you have so much at heart, to withdraw this Bill, which satisfies no one, and which, with the smallest amount of good, does almost the largest possible amount of harm."

[The spectators present here applauded the last speaker by loud clapping of hands.]

His Excellency the PRESIDENT said:—"It is a rule of this Council, and of all legislative assemblies in the world, that those persons admitted as spectators should not applaud on either side any of the sentiments delivered, and it is my duty to enforce that rule. I am quite sure that those gentlemen who have applauded on this occasion did so from forgetfulness, but it is a rule which must be observed; and, although sentiments are felt on one side or the other, they must not be expressed."

The Hon. Mr. EVANS said that the motion for publication was purely formal. It was only a strong sense of public duty, and a strong conviction that the present deplorable state of things ought to be put an end to at once, that led him to speak at this stage of the Bill. The question raised by this Bill, as stated by the hon. mover, was whether they "could with safety, and ought in justice, to re-open the settlement or compromise of 1872." Mr. Ilbert had admitted, practically, that he was bound to show three things—

- (1) necessity for disturbing the settlement of 1872;
- (2) that the new settlement proposed was a durable and stable one; and
- (3) that the new scheme was one conducive to the "effectual and impartial administration of justice."

He (Mr. EVANS) emphatically denied that any one of these propositions was made out. There was no administrative necessity; there was no element of finality or durability in the proposal made, and he challenged any one to say that justice would be "more effectually or impartially administered" under the scheme proposed by this Bill.

In order to explain the compromise of 1872, he was obliged to take the Council back to 1857, to show how the matter really stood; and how and why the settlement of 1872 was come to.

In 1857, European British subjects in Bengal had the right to have their criminal cases (with a few small statutory exceptions) tried by the old Supreme Court. This led to grave inconvenience in bringing down prisoners and witnesses from very remote places on trifling charges.

All persons in India were now in civil cases subject to the ordinary Courts, and no person was exempt from the jurisdiction of any Civil Court, by reason of birth or descent. The Penal Code was then about to be passed, making one body of criminal law applicable to all Her Majesty's subjects in India. And it was proposed, as a complement to the Penal Code, to introduce a Criminal Procedure Code on the same broad principle, enacting that no person should, by reason of birth or descent, be exempted from the jurisdiction of any Criminal Court. This would have swept away at one stroke the right or privilege of European British subjects to have any special tribunals, or special privilege as to the constitution of the tribunals, by which their liberties and their lives could be declared forfeited. There was a great outcry against the proposal and violent public feeling. Meetings were held, and a petition, signed by 1,100 European British subjects in Bengal, was presented to the Legislative Council. They objected to all the proposed tribunals, as incompetent, and to those presided over by Natives, as utterly unsafe.

Sir A. Buller, a Judge of the old Supreme Court, spoke in Council in March 1857, advocating a compromise. He admitted the grave inconvenience

of bringing all charges against European British subjects to be tried by the Supreme Court. But urged that this practical difficulty could be met by the practical remedy of making them triable only by the Sessions Courts—not by the Magistrates' Courts or the Subordinate Courts presided over by Natives.

Sir A. Buller urged that they were practical men, living in a land full of anomalies, which they must deal with practically. He said the Magistrates' Courts, though they gave the Natives far better justice than they ever had before, would give the European British subjects far worse justice than they had been used to. He did not think it was right to give poorer justice to the European British subjects to avoid an anomaly, if they

could give them as good justice as before, without hardship to the Natives. As to the Native tribunals, he thought the European British subjects were right in objecting to them on the additional ground of race antagonism.

The Chief Justice, Sir James Colville, supported him, and drew attention to the well-known habit prevailing among Natives in the Mufassal, of endeavouring to get rid of rivals by deliberately framed false criminal charges, supported by false evidence, and said the combination of executive and judicial functions in the person of the Magistrates prejudiced and biased their minds, and rendered the Magistrates' Courts in India very unsatisfactory tribunals.

Sir B. Peacock, the Legal Member of Council, said that though he had introduced the Bill he would consider the arguments. No division was ever taken on this question.

The Mutiny broke out with all its horrors, and race feeling rose to a fearful pitch. The Court of Directors withdrew the question from the Council, and it was resolved to continue the former system of having European British subjects tried solely by the Supreme Court.

In 1859, there was, however, another debate, which showed that Sir Barnes Peacock

had been taught by the Mutiny the danger of carrying abstract principles to their logical conclusion in India, without regard to consequences. Sir Barnes Peacock inserted in the Code a

provision disabling Natives in the Mufassal from even committing European British subjects for trial. Mr. Harington (a most able and experienced Civilian) thought this unnecessary. He said he had never advocated the *trial* of European British subjects by Natives, but he thought they might be allowed to commit; and he taunted Sir Barnes Peacock with having at first advocated the sweeping Bill of 1857, and having now gone to the opposite extreme. Sir Barnes Peacock replied that he had never committed himself to it, and that, even if he had done so, it was unfair of Mr. Harington to remind him of it. After the Mutiny he claimed the right to change his mind, and boldly avowed he had done so. Sir Charles Jackson, a Judge of the old Supreme Court, agreed with Sir Barnes, and pointed out the practical necessity of providing special tribunals for this particular class of persons, and shewed the utter fallacy of arguing that because Natives were allowed to act as Justices in Calcutta, and to commit Europeans, therefore, it was practically safe to let them do so in the Mufassal. The Criminal

Procedure Code of 1861 was eventually passed, leaving criminal jurisdiction over European British subjects practically as it was before.

Years rolled on, the echoes of the Mutiny grew fainter, and, in 1871, a revised Criminal Procedure Code was being prepared by Sir J. F. Stephen.

He was in Calcutta at that time, and knew both Sir J. F. Stephen and Mr. Stewart, and, speaking from memory, without any notes of what passed, he would give the Council his impression of the state of things that led to the settlement of 1872. The influx of a poorer class

of Europeans from England and Australia had rendered it an intolerable inconvenience to send them all for trial to the High Court in Calcutta for petty offences, and even gave practical immunity for petty crimes. The moderate and sensible men among the European British subjects fully recognised the necessity for giving some jurisdiction to some Mufassal Courts, and the Government pressed urgently for it.

The amount of jurisdiction proposed to be given to the Mufassal Courts over European British subjects was three months' imprisonment to be inflicted by a Magistrate's Court, and one year to be inflicted by a Sessions Court.

The European British subjects could not successfully object to the jurisdiction of the Sessions Judge, provided he was a European, as his duties were purely judicial. But they could well object to the jurisdiction of the Magistrates' Courts, for the reason touched on by Sir James Colville in 1857, that is, the combination of executive and judicial functions in the same person. The Magistrate was head of his district, had to keep the peace, to see that crime and lawlessness was detected and put down, to hold secret inquiries, to act as practical head of the Police, to decide on ordering prosecutions to be instituted, and then, when his mind had been thoroughly saturated and biased by the result of secret inquiries and police reports, to try the accused.

Further, Sir J. F. Stephen was very anxious to introduce by his new Code summary trials, as in Petty Sessions in England, in which there should be no regular record of evidence, save such *précis* of it as the Magistrate might record in his judgment.

Sir J. F. Stephen justly feared a strong onslaught by the European British subjects on Magistrates' justice. He knew, and all knew, that the finances of India could not

afford the severance of the executive and judicial functions of Magistrates, which the interests of justice loudly called for.

The European British subjects were likewise entitled to object to summary trial without a proper record of the evidence, as tending to nullify in practice the much prized right of appeal to the High Court in all cases, which they possessed and still possess.

But there was further, the danger, nay the certainty, of a fierce agitation by the European British subjects against being subjected to the criminal jurisdiction of Natives in the Mufassal. Any proposal to do this would (it was well known) revive the fire of race hatred and the memories of the Mutiny, which had been waning and dying out slowly, and do much to interrupt cordial relations between Natives and Europeans, and between the European community and the Government of India.

Sir J. F. Stephen was quite willing to concede that European British subjects should not be tried by the ordinary Native Deputy Magistrates, and in this all responsible Government officials agreed with him, and still agree. But Natives had begun to enter the Covenanted Civil Service, and the European British subjects utterly objected to entrust their personal liberty to Natives, whether covenanted or uncovenanted.

This was the problem which Sir J. F. Stephen and Sir John Strachey, and the other experienced men who made the settlement of 1872, had to decide—"Was it worth while for the sake of asserting the principle (if principle it be) that all Covenanted Civilians should be empowered to try Europeans as soon as they become full-power Magistrates, to risk the explosion which would inevitably have ensued, and which would have done incalculable mischief." Bearing in mind that it was admittedly impossible, and politically dangerous, to carry out in its integrity, in the Mufassal, the broad principle that no man should be exempted from the jurisdiction of any Criminal Court by reason of birth or descent; and, further, bearing in mind that everyone connected with Government was agreed that it was necessary to sanction a similar anomaly in the case of Uncovenanted Magistrates, and to enact in effect that full-power Uncovenanted Magistrates, who were Europeans, might try the European British subjects, but that the Uncovenanted Magistrates who were not Europeans should not have that power. The strong practical intellects of Sir J. F. Stephen and Sir John Strachey perceived that, to risk such evils to avoid this petty anomaly, which caused no practical inconvenience, after sanctioning so many departures from the only broad principle which could be appealed to, would indeed be to strain at a gnat after swallowing many camels. They knew also the strong practical objections which exist to entrusting this jurisdiction to Natives.

Accordingly, they informally proposed to the European community, through the non-official members, that, if they would consent to submit to the jurisdiction of the Magistrates' Courts and to the summary trials without opposition, they (Sir J. F. Stephen, Sir J. Strachey, and others) would agree that no Natives, not even Covenanted Civilians, should have power to try European British subjects. The European community, to whom the proposals were informally made, assented, and the arrangement was embodied in the report and resolution of the Select Committee.

This arrangement was come to, so far as he remembered, during the interregnum between the lamented death of Lord Mayo and the arrival of Lord Napier of Murchistoun, when Sir J. Strachey, as senior member of the Council, practically officiated as Viceroy, and it had Sir J. Strachey's fullest approbation, as appears by his remarks in the debate of 1872.

It was a wise, a statesmanlike compromise, and he felt well assured that the present Government of India, had they had the least idea of the lamentable results that would arise from endeavouring to upset it, would never have brought in this unfortunate Bill.

The debate of 1872 had been entirely misunderstood by Mr. Ilbert in his speech introducing the Bill, and Mr. Ilbert had unconsciously misrepresented the attitude of Sir J. F. Stephen and Sir J. Strachey in that debate.

All the opponents of the compromise in that debate admitted the principle, that only Natives who had become Europeanised in thought, and thoroughly acquainted with European manners and customs, could be permitted to try Europeans. So that a great portion of the proposals in the present Bill were directly opposed to the opinions of the eminent authorities who were appealed to, and relied on in support of it. In particular, so much of the present measure as provided that all Sessions Judges, whether Covenanted Civilians or not, should try European British subjects, was opposed to all authority.

Subordinate Judges from the Uncovenanted Service were now being promoted for their legal ability and aptitude in trying civil cases to be Sessions Judges. Many of them were men of high caste, saturated with caste prejudice, and had never been brought into social contact with Europeans, and were totally ignorant of their manners, customs, and habits of thought. This was also the case with the Natives now being admitted into the Covenanted Service under the new statutory rules, without competition and without going to England.

The Commander-in-Chief, in that debate in 1872, although he advocated the admission of Europeanised Native members of the Covenanted Service, yet was altogether opposed to the trial of Europeans by the Magistrates' Courts in the Mufassal, and had moved an amendment to confine the jurisdiction over European British subjects to the Sessions Courts, as suggested in 1857 by Sir A. Buller. The silence of Mr. Stewart, the non-official member, during the debate on the compromise, was due to a desire not to say things which are best left unsaid unless there is necessity, and to the assurance of Sir J. F. Stephen that a majority of the Council would stand by the compromise, and it was, he believed, the effect of the compromise which led Mr. Stewart to go against the Commander-in-Chief in the division on the subsequent amendment.

He made these observations as they were necessary to a correct understanding of the nature of the settlement of 1872 now sought to be re-opened. He did not put forward that compromise as anything legally or morally binding on the present Government; but he thought it was hard on the European British subjects to take away by a separate Act that concession by which their acquiescence in many of the provisions of the Code had been obtained, leaving in the Code provisions and powers which they were not prepared to entrust to any Native Magistrate in the Mufassal. He thought in fairness such a proposal should only be brought on when there was a general revision of the Code.

The power to direct prosecutions on suspicion and then try the case summarily, without record of evidence and without (in a large class of cases) any right in the accused to cross-examine after charge framed, unless the witnesses happened to be present in Court, were instances of powers which European British subjects were not prepared to entrust into the hands of Natives.

He hoped it was not likely that any Local Government would be so indiscreet as to appoint a Native Magistrate to any district where Europeans were strong and numerous, (a fact, if he was right, which went to show how useless the Bill was); but these powers in the hands of Natives would render the position of the lonely pioneers of European enterprise in remote places untenable and unsafe.

The next question was—

What was the necessity for reopening this burning question? None of the Local Governments consulted had complained of any administrative inconvenience. The reason there was no complaint was not far to seek. Only 11 Natives had entered the Covenanted Civil Service by competition in England, from 1864, when the first of them arrived in India, to the present day, and he had the authority of the *Statesman* for saying that the import had now ceased, owing to a change in the rules at home. Of these eleven one had left the service under circumstances which he need not advert to; one had gone to Madras and was dead. The remaining nine were thus distributed:—two were in Bombay; one, a young Parsee, a very junior officer, was in the North-Western Provinces; and the remaining six were in Bengal. There were none in the rest of India.

The Circular inviting confidential opinions from the Local Governments was sent out on the 28th April 1882, when Mr. Rivers Thompson was Lieutenant-Governor of Bengal, and it was singular that that circular was not sent to Bengal, and that no opportunities had been given to the Government of Bengal to consult its officers and the High Court on the subject.

He spoke subject to correction by His Honour the Lieutenant-Governor, who was present, but so far as he (as an outsider) had been able to gather, the opinion of the bulk of the Bengal officers and of the High Court was against the measure, and, so far as he could learn, no administrative necessity had arisen in Bengal or was likely to arise. It was impossible to allege the existence of administrative necessity in the rest of India arising from the presence of three men only, one of whom only would, so far as he could learn, be immediately affected by it and have the power conferred on him of trying European British subjects. The statutory Native Civil Service had very recently been created, and it would be years before the question of investing them with the power became a practical one.

As to stability and durability—

The settlement proposed had no single element of stability or durability. It proceeded on the principle (if it could be said to have any real principle in it) of allowing the Local Governments to determine the fitness of individuals to be Justices of the Peace, (Justices of the Peace alone being empowered to try European British subjects) while the area of selection was to be restricted and not left open as in the Presidency-towns, where any fit person might be selected.

Having enunciated this principle of personal fitness (to be judged by the Local Government), the hon. and learned mover found himself face to face with this difficulty. Everyone was agreed that it was not desirable to vest Uncovenanted Native Officers with this power. They, therefore, must remain disqualified.

But as the law now stood, Government was empowered to invest any Uncovenanted Europeans with the power, and had largely done so. There were now from 20 to 30 Uncovenanted European Deputy Magistrates, with first class powers in Bengal, who were Justices of the Peace, and had power to try European British subjects. The Uncovenanted Europeans were fit, and, so far as could be learnt, had exercised their powers impartially and efficiently, but it was an anomaly.

This difficulty was solved by disqualifying all Europeans who were not Covenanted Civilians from being Justices of the Peace in the Mufassal, and practically confining, with a few exceptions, the office of Justice of the Peace to ordinary Covenanted Civilians, whether Native or European, and to the Native Civilians admitted under the new statutory rules.

What principle was there in this? certainly not the principle of *fitness*, for no allegation was made against the fitness of the class it was proposed to exclude, that is, Uncovenanted Europeans. There was a difference of race and moral standard. The effect of it was to disqualify the Uncovenanted Natives. This was a fact. It could not be got rid of. This Bill attempted to hide or disguise the unpleasant fact by disqualifying the Uncovenanted Europeans against whose fitness there was no complaint. Thus, an apparent symmetry was produced at the expense of depriving Government of the services of a class of men who have been admitted as Justices of the Peace since the thirty-third year of His late Majesty, King George the Third, to the acknowledged advantage and convenience of the public service.

But his hon. and learned friend said there was a principle in this. His hon. and learned friend had apparently discovered that there was no privilege of European British subjects as to tribunals to be considered, but a "class of offences" which, from "the circumstances in which they were usually committed" by European British subjects, required to be dealt with by the higher class of Magistrates only. And it was to be presumed that it was this discovery which he considered justified him in disqualifying all Uncovenanted European British subjects from trying so "troublesome and difficult" a class of cases.

The only answer to be made to this was, that it had no basis of fact. There was no "class of offences," but there was a class of persons always liable to be accused of crimes, and who sometimes, but rarely, committed crimes.

Individuals of this class were, owing to the circumstances of the country, often "difficult and troublesome" to try. From the nature of things they must be far more "troublesome and difficult" for a Native to try than for an European to try. This class of persons was at present entitled to special tribunals, or to a special constitution of the tribunals by which they are to be tried.

This Bill attempted to disguise the fact—to allow this class to retain all its anomalous privileges as to tribunals (except the one now in question), and to justify such retention, not on the real ground, but on an imaginary ground, that is, that the offences this class commit are of such a character that Government is justified in enacting for the more "effectual and impartial administration of justice" that none but Covenanted Civilians shall try them, with a few exceptions based on no principle.

The Native Press utterly declines to accept this as final; and many of the Native papers, as the *Amrita Bazar Patrika* of March 1st, give it but very faint support, on the ground that the other anomalies are much more objectionable and inconvenient.

There can be no element of stability or durability in such an illusory settlement as this.

The object of these proposals was said by his hon. and learned friend to be the effectual and impartial administration of justice. On this point

Effectual and impartial administration of justice. it was enough to say that the proposal was to disqualify a class of men against whose effectual and impartial administration of justice no complaint had been made, and to substitute a class

(the Native Statutory Civil Service) whom Mr. Duthoit, Judicial Commissioner of Oudh, declared, in his confidential communication, to be utterly unfit to hold the scales of justice impartially, in cases where Europeans are concerned, and to be often saturated with caste and class prejudices, and who were not necessarily at all Europeanised. Even the *Statesman* (15th February) condemned this class as inferior to many of the Native Deputy Magistrates. Tried by this test, this measure fails on the face of it.

Many of the supporters of this measure were not prepared to go further than Sir Barrow Ellis' amendment in 1872, that is, in effect, to invest with these powers only the nine Covenanted Civilians elected by competition in England; but his hon. and learned friend had confessed, as he (Mr. EVANS) understood him, that it would be mere tinkering to stop there, and that the Government would not be justified in re-opening the settlement of 1872, unless they could go further and propose a permanent and durable settlement of the broad question.

There was another test which he would suggest when any change in a tribunal was proposed,—that is, that the tribunal, as reconstituted, should, if possible, have the respect and reverence of the class from which the accused are drawn, and should (if possible) be regarded by the accused and his class as a satisfactory tribunal. This is a cardinal point in the administration of criminal justice. It would be waste of words to demonstrate that the proposed measure utterly fails to stand this test.

He failed to see any sufficient reason for proceeding with so unnecessary and useless a Bill on the face of so strong and intense a feeling as existed, a feeling in which the whole European community in India were practically unanimous.

He was not oppressed by the wonderful "unanimity" of the confidential answers of the Local Governments consulted. Bombay stood in a very peculiar position, with comparatively a small Mufassal, and a small European population in it. The voice of experience in Madras was against it. Even the Governor thought it was a pity to introduce it now. Sir A. Lyall said it would not for many years become a practical question in the North-Western Provinces. The others had nothing to do with it as a practical question, as a measure which would come into immediate operation.

A number of one-sided extracts from the debate of 1872 were sent with the letter of Sir A. Eden and Mr. Gupta's note, and these gentlemen had, he ventured to think, given opinions without sufficient consideration on points which to them must have seemed more abstract than practical. He excepted Mr. Elliott in Assam, who pointed out the need of caution, and Mr. Howell in the Birárs, who showed the grave nature of the issue raised. But it was sufficient to say that all who had given opinions in favour of the change were mistaken as to the feelings it would arouse, and had apparently made no inquiries among the class to be affected.

The voice of Bengal was absent. He could not accept Sir A. Eden's letter as a demand by the Government of Bengal for legislation. Considering the circumstances under which it was written—on the eve of departure, and without any consultation of officers or of the High Court—he looked on it as the individual opinion of Sir A. Eden, suggesting a consideration of the subject at a fitting time, and recording his own opinion. He knew there were in it the words "the time has come." But on the whole he thought it was more a record of individual opinion than a demand for immediate legislation.

Sir A. Eden's views on the subjection of Europeans to Mufassal Courts had never been in harmony with that of the bulk of Europeans in Bengal, official and non-official, as appears by what took place in 1857, when he came into collision with the Judges of the Supreme Court. But he had too great a respect for Sir A. Eden's tact and administrative ability to think that he would have initiated legislation on this subject without trying to ascertain the views of his officers and the High Court and the European community. So much for the "consensus" of opinion.

Then it was said, how can Europeans object to Native Magistrates in the Mufassal and yet suffer them in the Presidency-towns? The power and influence of the European community—the blaze of publicity—the Press—the Bar—the presence and powers of the High Court—are sufficient answers. Besides, the Presidency Magistrate's functions are strictly judicial, and the practice of deliberately attempting to ruin rivals or enemies by cunningly concocted false charges, which is still as common as ever in the Mufassal, is practically unknown in Calcutta.

Argument to show the difference between the Presidency-towns and the Mufassal was unnecessary. His hon. and learned friend had just explained to them that in the Presidency-towns no person was, by reason of birth or descent, exempted from the jurisdiction of any criminal tribunal, and he had just read a long list of the anomalous exemptions accorded to Europeans in the Mufassal. It was not proposed to abolish any of these exemptions, except the one dealt with by this Bill. No responsible adviser of His

Excellency, who had any knowledge of the country, could be found, who would propose the abolition of these exemptions or the extension to the Mufassal of the broad principle that Europeans should be subject to all the Criminal Courts in the Mufassal exactly the same as Natives are. So long as this was so, it was waste of time to combat any argument drawn from a fancied similarity between the Presidency-towns and the Mufassal.

Then there was the alleged slur on Natives; but he denied that any set of judges, any more than assessors or jurymen, were entitled to complain of the privilege of the accused as to his tribunal as a slur on them. If there was to be any question of slur, the large class of Uncovenanted Europeans who were disqualified by this Bill might well complain. He himself, though a Justice of the Peace in England, and now qualified to be a Justice of the Peace in Bengal, Bihár, and Orissa, would be disqualified by this Bill.

But the question before them that day was not a pure matter of argument. The reality and intensity of the feeling against the Bill was patent, and was one of the main points they had to consider as practical legislators.

He felt it his duty to offer some remarks on the reasons for this at the risk of giving pain.

First.—There was a reason, of which all would admit the weight. It was most desirable that a Criminal Judge should be able to put himself in the place of the accused, so as to judge of the probability or improbability of his having committed the alleged offence. This was desirable everywhere, but especially in India. Criminal trials here generally proceeded entirely on oral evidence. The lamentable untruthfulness and untrustworthiness of the bulk of Native oral evidence had been repeatedly commented on by the Privy Council, and was well known to all. It was, therefore, particularly necessary that the Judge should be in a position to try such evidence by the test of its probability or improbability. But, if he was alien in thought and moral standard, and ignorant of the manners, customs, and habits of the accused, how could he put himself in his place?

It was to this power in the Judge, of putting himself in the place of the accused, that the lonely planter in the Mufassal, confronted with a false charge and false witnesses, and far away from help, mainly trusted for protection.

He might be told that defect was exhibited by Europeans in trying Natives. It was so, but that was no reason for introducing the same defect into the trial of Europeans. We had given the Natives an administration of justice immeasurably superior to anything they ever had before. The unswerving uprightness, probity, and intense desire to do impartial justice shown by European Judges had been an education to the people of the country, and they constantly showed their appreciation of it by asking to have their cases transferred from Natives to Europeans.

The second factor was race antagonism. This feeling, which had been fanned into a fierce flame by the horrors of the Mutiny, was slowly dying out, but it was most unwise to stir the embers while so many of the generation who went through the Mutiny were still alive. The vitality of that feeling had been lamentably illustrated by the outbreak with which this Bill had been greeted.

The third and most serious consideration was that dwelt on by his hon. friend Mr. Miller. The Europeans did not trust the Natives as they trusted fellow Europeans. He knew many upright and honourable Natives. But the broad fact remained that the bulk of the Anglo-Saxon race in India looked upon the Natives as men bred in a degrading idolatry, and surrounded from their infancy by influences most adverse to truth, uprightness, honour, and every quality which Englishmen most revere, and which they demand especially in a Criminal Judge. They think that many centuries of Christianity, and of free political life, have given them a moral fibre not to be found among Natives, especially Natives of Bengal.

Can it be wondered at (unless Christianity is a sham, and the belief in national character a delusion) that they refuse to recognise as an Englishman a Native who has spent two or three years in England.

When passed, the effect of this Bill would be to establish tribunals for Europeans which they objected to and refused to respect. There was a vast difference between civil and criminal law. Broadly speaking, the one affects the purse, the other the person. We might be willing to have Natives educated at the expense of our purses; we were not willing to have them educated at the expense of our persons. Every conviction of a European in the Mufassal under these circumstances would be looked on as unjust, and would revive the bitter and violent animosities which they all knew were raging around them that day.

Some said the agitation was a mere flash, and referred to the Black Act of 1836 in Macaulay's time ; but a reference to Trevelyan's life of Macaulay would satisfy anyone that the circumstances were widely different, and that no inference could be drawn from the one to the other. That was a Calcutta agitation ; this was universal over India. That was about appeals being transferred from the Supreme Court to the Sadr ; this was a far graver matter. Besides he thought any Government which proposed to deal with the present European community as "a mere handful of settlers," whose protests might be treated with contempt, would be forgetting the difference between 1836 and 1883.

Was this Bill likely, in any view of it, to remove any evils comparable in magnitude to those it was creating and would create ?

This measure would have the effect of giving the power to Uncovenanted Subordinate Judges, when promoted to be District Judges, to try Europeans, though they might be utterly ignorant of their thoughts, ways, and customs.

It would give this power to nine Covenanted Civilians who had been to England, but whom the Europeans in India declined to accept as Englishmen.

It would give this power to the new Native Statutory Civil Service who are declared by Mr. Duthoit to be utterly unfit, and who also are, or may be, Uneuropeanised and ignorant of Europeans. These persons may or may not form a useful machinery for governing Natives, selected, as they often are, on account of the influence and social position of their families. But they are quite unfit to be Criminal Judges over Europeans.

It was a measure which had exasperated Europeans to the highest degree, and had interfered with their growing cordial relations with the Natives and destroyed the harmony between the European British subjects in India and the Government, and would do so to a much greater extent before it was passed. It was a measure which provided a machinery for producing periodical outbursts of race feeling whenever a European was convicted, by a Native in the Mufassal—outbursts which would do immense harm and might lead to disastrous results.

It was a measure for which there was no necessity and one which touched almost the only point which was capable of uniting the whole of the Europeans in India as one man against the Government.

It was a measure which could, in any view of it, do little or no practical good, while it had already done and would do incalculable harm.

It was a measure which Government would never have introduced had they known the strength of the feeling against it.

He therefore implored the Government to show the truest form of courage by confessing an error of judgment and withdrawing the Bill at once.

The Hon. Mr. THOMAS said :—"My Lord, the hon. and learned member on whom, by force of his position, has devolved the duty of being the mover of this Bill, has stated emphatically, and re-asserted it on behalf of the Government, that the only object of its introduction is 'to provide for the impartial and effectual administration of justice.' It is a high claim,—a claim so high that every Briton is predisposed, without a thought, to bow to it instinctively, for a love of impartial and effectual justice is ingrained in him. Impartial and effectual justice is just what is in the very nature of every Briton to give to everyone within his power the wide world over. There is a danger, therefore,—a serious danger,—that, heralded with so high a claim, this Bill may be accepted without sufficient examination ; and for that very reason it is the more desirable and necessary that it should be stripped of any adventitious advantage it may derive from such heraldry. For we all love justice, and an equal love of justice will surely be conceded to those who, like myself, may venture to traverse this Bill. Presuming that so much will be conceded, we shall commence our examination of the Bill on more even terms, and bearing in mind that the test by which we are invited to try this Bill is, that its object is 'to provide for the impartial and effectual administration of justice,' I will ask, first, what, in prosaic business detail, are the actual particulars in which the dispensation of justice to British subjects is to be improved, so that it shall be more effectual, more impartial, than it has been heretofore ? and what the means by which it is to be effected ? The answer is supposed to lie in the Bill : there we find that it is by the entrusting of it to Natives of Hindustan that it is to be better done than when it was entrusted to Englishmen. Natives of Hindustan, Foreigners and strangers,—strangers in great part, some more, some less, some altogether—strangers to the social customs, the nice ideas of chivalry and honour, the thousand and one Western strains of thought and surroundings which underlie the springs of action of the British subject ; some only partially acquainted with the very language of the Englishman ; men who, at best, and but limitedly, have

mixed only with one class of European, the educated and more refined class,—they are to be entrusted with the trial of Europeans, the majority of whom are likely to come from classes of which they know practically nothing, whose only English, too, is an English sufficiently different from anything they have seen in a book, or heard from the lips of any educated European; sufficiently different to throw them out completely, to utterly prevent their getting sight of the point which shall show them the animus which is its gist, the depth and tenor of the provocation which is its justification or its palliation; men who, from want of converse with them, are incapable of appreciating the weight to the individual of the punishment they are called on nicely to apportion; men who have never been on board a ship in their lives; men—Brahmins for instance—whose very religion makes it a sin for them to experience a sea voyage, a sin for which they will be excommunicated; men who are under every possible disadvantage in forming any adequate conception of the necessity, for crew and passengers and cargo, that the commander of a vessel, leagues at sea, without Police or Court within months of him, should be complete master; the necessity—the absolute necessity—that his word should be law; men without a conception of the hardships of the sea, of the numerous petty means of tyranny open to a captain,—how can such men weigh rightly the use and abuse of power at sea? How can such men judge rightly between rough men of few words—rough captain and rougher seamen, using, too, a nautical jargon that is worse than Greek to them? And yet we are invited to pass this Bill, in the expectation that the administration of justice to British subjects will, in the hands of such men, in the hands of Natives, be more effectual, more impartial, that if it is left, as heretofore, to Englishmen.

“All this, I may be told, applies equally to the trial of Natives of this country by Europeans, as it does to the trial of Europeans by Natives. But, I venture to say, it does not. Europeans in India are compelled to learn the languages of the country; they have to learn them before they are even appointed in England; they have to still further qualify in them in this country before they can be promoted: the Natives, who are to try Europeans, are not so compelled. It is specially provided by Statute that the great and increasing majority of them are to be appointed without such examination. Again, Europeans in this country pass their lives among the classes they have to try, the criminal classes of all shades, the labouring classes, the agricultural classes, as well as the better classes; learning their patois, their habits of thought, and their religion or their superstition; learning everything that underlies their springs of action; walking his fields with the farmer, the jungles with the junglemen; listening to their tales of joy and grief; sympathising with and labouring for them; present at their festivities; leading their combined action for any good; hunting, shooting, fishing with them; carried by them by day and night in travel; ever accessible to them in camp or Court; speaking direct as man to man with them; caring, aye, and exerting themselves to the sacrifice of health and even life, for them in famine; and walking daily amongst them, seeing to their village sanitation and the provision of medical treatment when they are dying around them of cholera; making it the one object of their lives to sympathise with and work for them. Such, my Lord, is the life of a district officer. By such means does he qualify himself to enter into the case of the Natives committed to his care. It is no fancy sketch. I have been through it myself, and it is being gone through every day in India by hundreds. Such are the means by which Englishmen have qualified, and continue to qualify, themselves to do justice to the people among whom they live. Will anyone assert the same, or anything approaching the same, of the Natives of this country that are to be entrusted with jurisdiction over British subjects? Have they lived among captains and seamen, soldiers and engine-drivers, mechanical engineers and surveyors, planters and merchants? What have they in common? They are absolutely a sealed book to them, and will be, for they shun them. Only the better class of Englishmen do they know anything about—only the educated official whom they have to meet in business. Of that class only, from whom will never come the subjects of trial, have they any knowledge at all; and even that knowledge is very superficial, and is only what the European chooses to give them, not what they search for for themselves, as we do among them. They do not court knowledge as a duty with a view to be in a position to do justice as the European does; they do not throw open their houses to us as we do to them. Their very religion forbids it; their very religion disqualifies them for ever having an intimate knowledge of the inner life of the European; and, if the fact is so, even with the better classes of Europeans in all but the Presidency-towns, and to a large extent even there, it is still more so in connexion with the classes of Europeans from whom criminal cases are likely to come. For that class of Europeans they studiously avoid, not only on religious grounds, but also because they are afraid of them. The courteous

Asiatic does not understand their rough ways, and there is no reason why they should ever understand them, for there is nothing to bring them into every-day contact with such men. They do not seek to know anything about them, and yet they wish to try them. It is surely irrational! And apart from not seeking, as a duty, to comprehend the habits of thought of the classes they may have to try, there is nothing accidental even to throw them together. They have no subjects of common interest.

"But I will withdraw the statement that, disqualified though they are, and, in accordance with all their preferences, will continue to be, they irrationally wish ignorantly to try Europeans.—I will withdraw it because it is not mine, but an imputation of their own countrymen, an imputation cast by a very few, who grasp at power, an imputation that I believe to be utterly without foundation among the masses. My belief is, and I speak from some little experience of Mufassal life, that the very great majority of Native officials in the Mufassal,—and it is only the Mufassal that the Bill deals with,—the very great, the almost unexceptional, majority would infinitely prefer not to have the white elephant that the Bill proposes to give them. It is only just to say that they are conscious of their disqualifications to try British subjects, and do not want to have to do what they cannot do to their own satisfaction; they are conscious that the Englishman is far more competent to try his fellow rightly; and they would infinitely prefer to leave the difficult task to him; they are content to be left to try only their own countrymen whom they do understand.

"But we have not yet got to the bottom of the incongruity; there is still a lower depth, and one that touches Englishmen, as indeed it touches all manly men, very home. I allude to the wives and daughters of our land. If the Native who is to try has but a very partial knowledge even of the better classes of Englishmen with whom his business compels him to mix outwardly, and a much less, if any, right knowledge of the lower class of Englishmen from whom he is free to keep away, still less has he any knowledge of the ladies, of the wives and daughters of their families. And yet he is to try them; for the term British subject, be it remembered, includes both sexes, and the English lady as well as the British sailor and the British soldier is to be subjected to the jurisdiction of Asiatics. A false complaint lodged by her ayah or Indian lady's maid, by her tailor that sits daily in her verandah, by any one of the household servants, grooms or coachmen, whom, as mistress of the house, she has to order on her husband's behalf,—a false complaint by any irrepressibly obtrusive hawker, who comes unbidden into the very verandah in which she is sitting and will not leave it,—a false complaint by any outside petty cobbler who has been paid his due, but thinks to get twice his due by means of vociferating clamour amounting even to menace, in a manner quite inconceivable to, and incredible by, those who do not know this country,—a false complaint by any of these may any day subject English ladies and English women to be tried by Foreigners. These are no ideal pictures. They are every-day circumstances of middle class Mufassal life, unexperienced, perhaps, by the well-to-do, but well known to their poorer unofficial brethren. Patience outlives the provocations, and nothing comes of them, because there is the certainty of a fair trial in the background, and the Court is the Court of a countryman. But when it comes to be known, as it will be known if this Bill passes, that anyone can summon an English lady before a Native, and that, right or wrong, she will, in 99 cases out of 100, pay any fine rather than appear, and it is borne in mind that, even if she does appear and answer to the charge, the complainant has more than satisfied himself with the sweets of the annoyance he has caused,—when this comes to be known, there is hardly room to doubt that complaints of this sort will become distressingly numerous. The position of English ladies and English women, left alone in their houses while their husbands are in Court, or camp, or office, or workshop, will be very distressing even in the bare contemplation. The security, and the feeling of assurance of security, which they now have, in trial by a British Magistrate, will be gone from them, and they will be subjected to the jurisdiction of Asiatics.

"I have cursorily alluded to the falsity of the complaints; but only most cursorily, both because I took it for granted that the proneness to false complaints in the Mufassal was well known, and also because I shrunk from dwelling on that side of the question—I shrunk from it, because unwilling to make unkindly imputations. But now that it has been stated by one hon. member that such is not his experience in the Mufassal, and the hon. and learned member to my right (Mr. Evans) has advanced opposite experience, I feel bound to say that my experience of the Mufassal, extending as it does over nearly a quarter of a century, is entirely in accord with that of Mr. Evans, that false complaints and false evidence are common in the Mufassal. I speak not of what may be called exaggerations and hard swearing; I speak of deliberate machinations,

that are perfectly staggering and appalling to the European ; of rehearsals held in the presence of all the witnesses, that they may be thoroughly tutored in all details ; of dress rehearsals, so to speak, held just before the trial, and in the very precincts of the Court to refresh memory. I could instance a case in which a poor man was hired to take a blow from a billhook, and all the witnesses were present to see and testify to the blow in all detail, only instructed to substitute an European for the Native striker of the blow. I could produce volumes of such evidence, but time will not allow. And I have no desire to do more than is absolutely necessary to bring that side of the question forward, and have only been constrained, as I have said, by the conflict of opinion.

"And why, let me ask for Britons, as they will ask,—why are they to be thus subjected to the jurisdiction of Asiatics ? Not on account of any necessity of the case ; not because it cannot be helped ; not because the Natives wish it, but because—yes, that is what we are asked to expect—because the justice thus provided through the medium of the Asiatic will be more impartial, more effectual, than that dispensed by the Englishman himself ; that is what the proposal comes to ; that is what the Bill says in effect ; and my business is with the Bill, the people to be tried by it, the people to be empowered by it. The only object of the Bill is 'to provide for the impartial and effectual administration of justice,' and that is the test by which I am invited to try it. If it be said that I rather overstrain the argument by applying the claim of impartial and effectual justice to the people to be tried by the Bill, and not, as was meant, to the magistrates and judges who are to administer it, then I plead in answer that such words should never surely be said with reference to any but the persons who are to experience in their proper persons whether the justice meted out is or is not impartial and effectual ; that they have no applicability to anyone else, least of all to the mere machinery, the judges and magistrates, who only give life and existence to the Bill, and are merely the means by which the more impartial and effectual administration of justice is to be provided.

"Whatever may have been said elsewhere on the other phases of the Bill as it affects Natives, by removing an anomaly and a stigma, it cannot be that the claim by which we are invited to try the Bill, that of providing impartial and effectual justice, can have been put forward with reference to anything but the quality of the justice administered to the people who sought it, that is, to the complainant and accused. The question of anomaly and personal stigma is perfectly distinct. We shall come to that separately hereafter, but at present we have only to do with the claim that the Bill 'provides for the impartial and effectual administration of justice.'

"To the Englishman at home, who knows not this country, it may even seem that it does so provide ; but when the Bill is examined in the light of the experience of those who have spent their lives in the study and the service of this country and its people, who can throw upon the Bill the light of actuals rather than of theories, it is then that it becomes apparent that the circumstances of the position afford no real foundation for the expectation that the administration of justice to British subjects will be either more effectual or more impartial for being entrusted to Foreigners and strangers rather than to fellow-countrymen—to Natives rather than to British subjects.

"But this, I may be told, is my idea—only my idea. Let the Native speak for himself. I shall quote, my Lord, from the *Madras Native Opinion*, a newspaper edited by a Brahman of considerable culture, a Native who has the interests of Natives, the interests of his country, very much at heart. He writes in a leading article of that paper, dated 14th February 1883 :—

'Let us take, for instance, the case of a Deputy Magistrate of the first class who is called upon to try a case between two Europeans, one, say, a Covenanted Civil Servant, and the other a merchant or a planter. The case may be one of assault or defamation, and have arisen out of some episode at a ball, a club-room, or a dinner party. Now, if the Deputy Magistrate happens to be a Brahman (as almost all of those on the Madras establishment are) who has not been in Madras, and whose knowledge of English is but limited, what a predicament the poor man is sure to be in ? He cannot possibly understand the allusions which will be made, and the conventional terms used in such a case, and he cannot very well engage an interpreter to explain what is meant. We leave our readers to imagine what the result will be, and what satisfaction the Magistrate's decision is likely to cause to the litigant parties.'

"And in a subsequent issue the same Native editor says—

'We must not lose sight of the fact that, while nothing is easier than for the European to obtain evidence or information on such matters in Native society as he might not know, the Native Magistrate is very differently placed. The *Munshi* and clerks of an Anglo-Indian Magistrate are Natives of the country, and if they are not able to supply it themselves they can easily obtain for their

master any information the latter may need in connexion with the disposal of cases. Now, to whom can the Native Magistrate turn when he has an Englishman brought before him ?

“ And this Native editor is not alone in his opinion of the unfitness of his countrymen to try British subjects ; but I must revert to the objection that, if it is right in theory for Europeans to try Natives, it is right also for Natives to try Europeans ; and again I will say that, in my humble opinion, it is not so, because the case is not parallel. It is not as if Englishmen were asking to have authority to try Natives, as Natives are asking for jurisdiction over British subjects. The whole history of our Law Courts in India shows the fallacy of such an argument. Englishmen have no desire to try Natives because they are Natives. Indeed, they would never have tried them at all if they had been capable of trying themselves, and our whole aim ever since we came to this country has been steadily in the direction of fitting them to try their own countrymen ; and as we have found them more and more qualified, so we have gone on extending their jurisdiction over their countrymen, or, in other words, resigning to them more and more of the judicial work in connexion with their own countrymen that we had in earlier years to do for them.

“ Thus falls to the ground the argument that, if Englishmen try Natives, so, in fairness, ought Natives equally to try Englishmen ; for, as we have seen, the Englishman does not want to try Natives, and is getting rid of the duty and consigning it to their countrymen as fast as he legitimately can. The Native also, with a few exceptions, does not want to try Englishmen, and is not qualified to try them even if he wished to.

“ Once more, this same history of our legal dealing with India, if examined a little more closely, will fully explain the seeming anomaly of British subjects being exempted from Native jurisdiction, the seeming anomaly of which so much has been made. When we came to this country, did we find equitable law courts in which Englishmen and Natives could alike obtain equal justice ? did we upset them and introduce this anomaly in favour of our countrymen ? No. We found Surāja Dowla, and the Black Hole, and the like of that. There was no such thing as law and justice. The land was a land of violence, of systematic and periodical marauding, of constant blackmail, of daily uncertainty of life and property, in short, of all the many forms of anarchy and misrule and lawlessness which I may not stay to dwell upon. It is matter of history, and it still lives in proverbs, customs, castes, tenures, structures, which point to the then everyday existence of a state of things for which there was no remedy but to sweep it clean away. It was for us, a mere handful of strangers, to introduce law and order, and to import into this country as much justice as was possible in the circumstances. We were too few in number to give to every Native with our own hands as good justice as we were accustomed to in the land from which we came ; but we were enough to mete it out to our own countrymen, from whom there probably was not more than a case or two in a decade ; and not only were they entitled to have no less a scale of justice than we were able to give them, but in the earlier days it was more, perhaps, to the interest of the Native than of any one else that Britons should be tried by Britons, who had both the courage and the mind to enforce law and order on their own countrymen, and to put down with a strong unwavering hand any disposition to take advantage of being members of the dominant race. Other than Britons there were none in the early days, because all other Europeans were deported. Thus it came about that Britons in India have till now been under the jurisdiction of Britons, and there was, and is still, *no necessity* for their being under any other jurisdiction.

“ With the Natives, however, the necessities of the case were very different. It was impossible that the few and far between Englishmen should, in their own person, try all the teeming millions of Natives over such wide areas. The attempt would have been too extravagantly quixotic. They did the closest they practically could to it. In short, they aimed at the same thing for both ; they aimed at giving the Native, as they gave their countrymen, the very best justice in their power to give ; and while they gave the Briton the same as he had been accustomed to in the land of his nativity, they gave the Native of India a very great deal better than he had ever seen or heard or dreamt of before. And this they did by keeping the graver cases in their own hands, by deciding the intermediate cases on reports accompanied by the record, and leaving only minor cases to the decision of Natives. Then they fostered education, and they imposed examinations on candidates for public service, and subsequently they enhanced the scope of those examinations ; and as they gradually qualified the Native for the right exercise of power, they entrusted him with more and more of it, till now we have Natives on the High Court Benches. I confess it puzzles me, my Lord, to see how anyone can say that the tendency of legal administration in India has not been uniformly

and without anomaly in the simple and single direction of giving the best form of justice possible in the circumstances to all classes, Briton and Native alike. With Britons we started at the top, because, from the paucity of their numbers, it was possible to do so. With the Natives this was impossible, because of their countless numbers, and their unmanageable areas, compared with the mere handful of Englishmen that have governed this vast Empire. So we started as near as we could to the same point, and keeping it ever in view, progressed steadily as circumstances allowed, always towards the same end. The progress has ever been upwards and the principle uniform. There has been no anomaly whatever, and there is no anomaly now in the sense urged in favour of this Bill. But to turn round now and progress downwards, by placing the British subject under a tribunal of less competency to do him justice than he already enjoys, and we have readily at command, and to do that for no better reason than to remove a fancied anomaly, that would be an anomaly indeed.

“The anomalous nature of present arrangements’ is one of the reasons put forward for the introduction of this Bill. Rightly examined, the anomaly lies, not in Natives having less jurisdiction out of Presidency-towns than they have in them, but in their having jurisdiction over British subjects anywhere. The anomaly lies in having made an exception of Presidency-towns. The anomaly lies in having, in Presidency-towns, departed from the simple principle on which we had uniformly proceeded, of ever giving to both races the best justice practicable in the circumstances, in proceeding downwards instead of upwards. Remove that anomaly, and the position is logical and clear. But to set up that anomaly, and to base on it the claim to surround it with so many more anomalies that it shall cease to stand out singly as a marked anomaly, is to lead us blindly into a maze of anomalies in which we can never see our place to stop.

“If we must needs turn aside to such trifles as anomalies, and legislate on what I will take leave to call such very secondary grounds, then, to be consistent, we ought rather to wipe out this first great anomaly, have done with the whole side issue, and revert to first principles—logical principles. But there is no need for this, and all I wish to say on this point is, do not let us bring the existence of one anomaly forward as a reason for justifying the creation of more.

“I submit, my Lord, that if we want to avoid anomalous positions and preserve logical action in the future, there is no point at which we can so safely call a halt as where we now are. The hon. and learned mover of the Bill, in summing up the principles which have guided the framers of the Bill, says—and I cordially agree with him in the principle—‘that, if this question is reopened, it ought to be settled on a permanent and stable foundation.’ I agree with him, because it is a corollary that, if it cannot be ‘settled on a permanent and stable foundation,’ it ought not to be re-opened. I submit, my Lord, that there is no landmark that can be called permanent about the position which the Bill takes up. It gives Natives the same jurisdiction over British subjects as Englishmen exercise over the same class of criminals, but that is not the same jurisdiction as is exercised over Natives; it is a modified quantity of jurisdiction amounting only to imprisonment for one year in the Mufassal; and, while the distinction in the quantity of punishment awardable to British subjects and Natives is maintained, it cannot be said that the Bill has brought us to the point to which it is claimed to have brought us, that of impartiality, of the removal of race distinctions, and specially of finality. Sir Ashley Eden—though I doubt whether he used the words advisedly—certainly does use the words ‘full powers,’ and that means the powers of life and death, of transportation for life, of imprisonment for 14 years. When the Native Judge in the Mufassal exercises such powers over the British subject, then we shall have removed ‘race distinctions;’ then we shall have arrived at impartiality and finality. But not till then. If the advocates of the Bill are not prepared to go as far as that, then admittedly they are not prepared to conduct us to what alone will justify the re-opening of this question, a settlement ‘on a permanent and stable foundation.’

“Again, there is no element of finality that I can trace about the persons selected for the exercise of jurisdiction over British subjects.

“There is no such self-evident cause as can stand as a landmark why others should not equally be selected. Indeed, for my part, I think a Deputy Magistrate who has been for years associated with Europeans, who has had a long magisterial training as a Tahsildár Magistrate, who has his judgment mellowed by years, who, at the very outset of his career, has to pass qualifying examinations, and who has eventually been promoted for tried efficiency, is eminently better qualified to exercise such powers than a young man under 25, appointed without like examination, without trial, and without magisterial training or converse with British subjects; and such are the Native Civil Servants con-

stituted under the statutory rules. If, then, the Native Deputy Magistrates, who are in hundreds all over the Presidencies, are obviously preferable to one of the classes named in the Bill, it follows that the settlement made by the Bill is not 'on a permanent and stable foundation.' I do not see how anyone, be he Native or European, can well think that this will be a final settlement. On the contrary, well nigh everyone outside these walls seems to look upon it as a mere beginning, as the opening of a door, as the introducing of a principle; and that is why there is so much agitation and anxiety about it—and that is why I, for one, my Lord, have indented so largely on your Lordship's patience. What I feel is, that this Bill will lead us into a hazy illogical position, with no distinct landmark to stop at; whereas, if we stand where we are, we have a defined line and a reason for it in Presidency-towns. If once we leave them and go half way down hill on the road to inferior justice for British subjects, we can never stop till we reach the bottom; and that bottom, where is it? It is deeper down even than our own Native Courts. It carries us into Native Courts in Foreign States. When once we have admitted that in our own Courts Natives are to try Britons, we can no longer insist that in Foreign Courts Britons shall not equally be tried by Natives; and so we shall have created another anomaly that will have to be wiped out. We shall not have arrived at finality; we shall have to go on and rescind the Act, not so long ago enacted, by which Britons were exempted from Native jurisdiction in Foreign States.

"Once more, the same hand that sweeps away anomalies and partialities so as to lead us to a settlement that shall be final, introduces, by the same stroke of the pen, an incongruity and a piece of race partiality that, to my thinking, is more glaring than any which it removes. The effect of the amendment of section 443, by the elision of the words 'and an European British subject,' is, not only to admit the Native to jurisdiction over British subjects, but by race distinction to bar the Briton, so that, if, for instance, the learned and hon. member to my right (Mr. Evans),—distinguished member though he is of the Calcutta Bar; if the Lord Chief Justice himself—were to elect to offer their services gratuitously for the trial of their countrymen in Calcutta or elsewhere in India, as they might do, and as so many do in England, they would find that, by the Bill we are asked to pass, they would be legally disqualified by reason of their race. In spite of their having the highest possible qualifications, in legal knowledge, in knowledge of the classes to be tried, to wit, their fellow countrymen, they would be legally barred by race distinction—barred solely because they are Britons, barred in the interests of the more effectual and impartial justice to be administered by Natives, stigmatised—if we are to use such a poor argument at all—stigmatised, in order that no stigma may be cast on Natives; and this, we are told, is an element of finality. The barring of the Briton is to be final.

"But casting to the winds such very secondary ideas as legislating for a stigma, neither is it convenient in practical every-day work that every Briton, simply by reason of his being a Briton, should be barred from jurisdiction over Britons. At certain ports, far distant from the seat of any Magistrate, it is convenient that the master attendant should have jurisdiction in trifling cases over the seamen frequenting the port. That will not be possible when all Britons are legally disqualified by the proposed amendment of section 443.

"As the word 'stigma' has been forced upon us, and we are called on to consider it in the course of this discussion, let me take the opportunity, before parting with the word, to say that, in considering their *circumstantial* disqualifications for trying Britons, I cast no manner of stigma on Natives—no more, in fact, than if the Commander-in-Chief, there, were to stigmatise me as unfit to command a brigade, or even a company. And even if it were a sort of fancied stigma not to be allowed to try a class of cases you were not calculated to be exactly the best man to understand; even if it were a hardship equal to being tried by a man who was not calculated to understand your case, and the hardships on both sides being equal—which, of course, they are not and never can be,—we were cast on the horns of a dilemma and had to choose between them, there still need not be a moment's hesitation about the choice, for the persons affected by the one hardship are in thousands, if not tens of thousands; whereas those affected by the other fancied hardship may be numbered on the fingers. On the principle, therefore, of the greatest good of the greatest number, there should not be a moment's hesitation about abandoning a Bill that legislates for the few against the many.

"To sum up the above objections and apply them to the Bill. Not only does this Bill not 'contain in itself,' as is claimed for it by the hon. and learned mover, 'the elements of stability and durability,' but it is pregnant with exactly the opposite elements,

and, therefore, by the corollary of that very proposition, this question ought not to be re-opened.

"Looking once again at the reasons given for the re-opening of the question, I find it is commended to us on the ground that 'the time has come.'

"It is a set phrase, 'the time has come;' but there may be two views about its applicability. The time when we are doing all we can to induce English capital to come to this country seems scarcely the time to scare it away with inferior justice to the Englishman. Tell the English capitalist, who is prepared to send his sons and his money out to this country to be large employers of labour in coffee, tea, or cinchona estates; in gold, iron, and other mines; in cotton or jute mills and so forth,—tell him that, if any one of the several hundred men, women, and children employed by his son lodges a complaint against him, 'the time has come' for his son to be tried by a Native,—I have a shrewd suspicion that he will have very different ideas about the time. He will not stay to ask what like the Native is, whether qualified or not. He will be apt, I think, to have strong opinions—some might call them prejudices—which we will have to put up with if we want him to bring his capital, for in that, at least, he is master of the situation. He will turn his back on us and send his sons and his capital elsewhere. And in the main he will be in the right; for, whether the planter gets justice or not at the hand of the Native Magistrate, is rather a secondary consideration; the mere fact of his having, on some trifling charge, had to appear before and be tried by a Native Magistrate, of the same caste and family, perhaps, as one of his own writers or contractors, will so lower him to their own level in the eyes of his two or three hundred coolies, that he will not be able to command their respect any more. It can answer no useful end to judge of these things by European ideas; we must take them as we find them in this country; and such, I am convinced, would be the effect on the mind of the Indian coolies and their maistries. I am convinced of this; because I have moved not a little amongst planters and their labourers, and made it my duty to acquaint myself with their position, as much as with that of any other farmers and their men; and now it is equally my duty to represent their interests here to the best of my poor ability; for their interests are the interests of the country, and it will be a dark day, indeed, for India if British energies, British intelligence, and British capital leave it in disgust. In a less degree, also, it will be an evil day for India if British energies, intelligence, and capital are discouraged from continuing to flow into it. It is a consideration of no small moment that the planters of Assam, of the Nilgiris, of the Wynaad, and other places, with the lakhs of rupees that they bring into this country, should not be discouraged, which, I am convinced, they will be if this Bill passes. I specially allude to planters, because, settling, as they do, in isolated positions, each a lone man among a hundred, they are specially trusting in, and specially entitled to, the best justice we can give them, a style of justice that shall give them a feeling of security.

"One word more about the time having come from another point of view. If any of the above reasons for not subjecting Britons to native jurisdiction have any weight, and had weight to sway the majority in 1872, surely they can only have *increasing* weight as the number of British subjects in the country increases; and in that sense the time, instead of having come, is, if anything, more remote than it was in 1872.

"When this matter was discussed in 1872, there were no Native gentlemen in this Council. Now there are four hon. members, and they are called upon to decide with us on the liberties of the British subject. The appeal to try the question by 'impartial justice' is addressed to them as well as to us; and there is a side of this case which specially addresses itself to them. They are better able, perhaps, than we are to appreciate the value to them of the special concessions made to them,—concessions made, some of them, in the very face of Western notions of justice,—concessions simultaneously denied to our own countrymen. I will touch with a word only, lest I should offend, such things as dancing girls, child marriage, child widowhood for life, plurality of wives, exemption on account of rank from appearance in Court, exemption on account of sex from appearance in Court—exemptions that we do not accord to our own Princes and our own ladies. Natives are the best judges of the value to them of these and like privileges, and, accordingly, they have been allowed, and rightly allowed, to be the judges: their voices have ever prevailed; their wishes have ever been scrupulously regarded, the only test applied being, will it do any positive injury to anyone else to concede these privileges? If it will not, then, by all means, let us liberally concede them. This has been the principle that has guided the concessions to Natives. Is it not fair to let the same equitable principle govern the grant of concessions to Europeans? Britons are

the best judges of the value to them of the privilege of being tried by Britons, a privilege of which they seem to think so much ; and if it will not do any positive injury to anyone else to let them have the privilege, then, by parity of treatment, by all means let them have the privilege. This view of the case will, probably, commend itself to the minds of Natives as an impartial one. Again, what would Natives think if, with the cry of justice to a class amounting to one half of India—the downtrodden females—in the interests of morality or any such like cry which an English philanthropist might raise, we ran atilt at their time-honoured institutions ? I imagine they would say at once that it was legislating for an idea, was uncalled for and provocative. By parity of reasoning, the great mass of Englishmen look upon this attack on their privileges as equally uncalled for. If the attack is not justifiable in the one case, neither is it, I submit, in the other. Far, far be it from us to disturb the mind of the Asiatic with even the breath of a suspicion of any interference with his time-honoured valued privileges, that do no positive injury to anyone else. By parity of treatment, far be it from him to deal by us otherwise than as we have dealt by him.

“While I have contended above that trial of Briton by Briton is only a natural sequence of the impartial effort to give to Briton and Native alike the best justice in our power to give, here, I have called it, for argument’s sake alone, a privilege, and even as a privilege have shown, I think, that it has a claim to be honoured ; a claim, too, based strictly on the very test by which we are invited to try the Bill, that of impartiality.

“But what I have said above has been simply comment on the reasons given for introducing the Bill. The reasons for not going on with it, though few and simple, are, to my mind, more forcible.

“The first reason is of itself enough to throw out any Bill. It is not wanted. With the exception of a fanciful few, fidgetting impatiently after an idea, nobody wants the Bill. Nobody, European or Native, wants the Bill for any practical good that it will do him.

“On the other hand, there are very large numbers who, whether rightly or wrongly is a secondary matter here, are nevertheless, as a matter of fact, vehemently, aye vehemently, opposed to the Bill, and they come of a class, too, on whom all the best interests of India are immeasurably more dependent than they are on any other class. It is an obvious fact of which we cannot but take count, and their vehement feeling in the matter has led to the rousing and bringing prominently forward of the very feeling which the Bill was meant to lay—race antagonism—feeling given expression to in the Native Press, and thus disseminated, in much more violent and provocative language than Britons have indulged in. Now that it has been unmistakeably seen that the Bill has roused and keeps on intensifying the very feelings it was meant to allay, the Bill, if it is to be consistent with its aim, ought, I submit, to be withdrawn.

“That it is wanted for administrative convenience, as has been alleged, is a mere loose statement, which five minutes reference to the criminal statistics of the country would conclusively falsify. Theoretical positions may be set up, but so absolutely is fact against theory in this matter that I will not waste time on it.

“Though I have urged above that, in effect, the Bill does not give what it professes to give, I never meant to imply that; in theory and in the minds of the framers, it was not honestly, generously intended and expected that it should and would give it. Who would doubt it ? Not doubting it, I venture to urge that the same soul of honourable, generous impartiality which lay behind the idea that prompted the Bill, should equally impel the advocates of this Bill to abandon it, now that it is unmistakeably clear that the Bill will not forward, but will positively thwart, their liberal intentions. I am not one of those who cannot admit honourable, high-minded intentions in those who think differently ; nay, rather, I venture to make an appeal to those very intentions to which I pay all honour. If it is manly in an individual to admit a well-intentioned error, and he only rises in our estimation for the generosity of the admission—and none but the mean-spirited will impute it to weakness—may not a Government also, conscious of its strength, do the same with advantage, advantage both to its own credit and, what is of much more importance, to the interests of the great country committed to its charge ? By the introduction of this Bill, the Government has made it abundantly plain that it entertains the most liberal intentions towards the Natives of India ; that it has placed beyond a doubt ; that surely will henceforth be accepted on all hands without a question ; and that having been demonstrated, surely the Government is in the best possible position for saying in effect, if not in word, to the peoples of India—‘Though we entertain these unquestionable sympathies, yet, in the course of the ventilation which this Bill has undergone, we have come to know that the passing of the Bill will not compass for you the

advantages we had aimed at, but will, on the contrary, injure you seriously, by rousing a deep feeling of race antagonism in a class on which all your best interests are immeasurably dependent for justice, intelligence, capital, energy, progress in civilisation, commerce, agriculture, and all the material elements, of peace, plenty and health. Though in an infinitesimally minor degree, the Government itself also is not without indebtedness to the martial loyalty of the class that strengthens Her Majesty's forces in India by the supply of some ten thousand volunteers of all arms. We have accordingly resolved, in the best interests of the very people for whom this Bill was introduced, to abandon it. If the Government can do this of its own motion, it will, I submit, take a high stand indeed in the calmer judgment of posterity; and it can well afford, in its conscious strength, to think cheaply of any such petty charge as having yielded to clamour; for, in the eyes of the wise and generous, it will be judged to have yielded, not to clamour itself, but to the light cast by the expression of feeling elicited by the ventilation of the Bill, or to speak more correctly, not to have yielded a jot, but adhered, under the new light thrown, to its own previously expressed intent of allaying race antagonisms.

"If the Government can do this, not in Council here, but of its own motion, then a thousand times *bis dat qui cito dat*. The sooner it does it, I submit, the better. If the Bill is understood to be only postponed till November, then the deplorable—the very deplorable—feelings that have been roused on both sides will only smoulder deeper and wider till the November discussion fans them again into flame; and then, if the Bill is carried by the Government, voting as a Cabinet, and not individually, as on the discussion of this point in 1872, the feeling will not pass away with the passing of the Bill, but will sullenly live for years to come and burst out afresh whenever a case in point arises. I hardly like to dwell on the depth and growing intensity and breadth of the feeling of race antagonism that has been raised. I only feel bound to touch the warning note, that it is a matter worthy of the gravest consideration of Government.

"The Government has only very recently taken additional steps for the better ventilation of Bills, with the avowed intention of availing themselves, in the interests of the country, of the better light shed by such increased ventilation. Here, then, in the deep and widespread agitation and vehement expression of strong feelings, is the very light they have courted. Will they cast aside the very light they have courted on the very first exhibition of it? Will they not rather recognise that it is the very light they courted, and, in consonance with their own previously expressed policy, rather use it in the best interests of the country? Surely they are in an advantageous position for doing so without risk of being misunderstood.

"Both in respect of having unmistakeably demonstrated their liberal intentions towards Natives, and in respect of having expressed a desire, for the public good, to obtain and be guided by the views of the people legislated for, and also in respect of both acts being quite recent, the Government are surely in the best possible position for promptly withdrawing this Bill of their own motion. Indeed, if they do not, they will even seem to stultify their own professions.

"Yet another course is open to the Government, a medium course that will probably satisfy the moderate minded on both sides, giving the Native the coveted brevet rank, and still practically retaining to the Briton his freedom,—a course also that will lead us into no illogical positions, and meet all fancied administrative difficulties—that of making the jurisdiction proposed to be given to Natives permissive only on the Briton positively waiving his right to be tried by a Briton. But in such case it would have to appear on the first summons that the Briton had the right, and he would have to endorse his election to appear or not to appear before a Native, and the jurisdiction should not be extended beyond the cases now contemplated. But this is only suggested as a compromise not without dangers; and the much more satisfactory and manly course would be to abandon the Bill.

"Having taken upon me to tender this my humble opinion of the best course to be pursued with this Bill, I wish to submit that it is in no spirit of factious opposition to the Government; indeed, I knew not till very recently that the Bill was to be regarded as a Cabinet measure, if indeed it is to be so regarded, as the hon. Law Member tells us to-day, and herein I must plead my newness to the rules of this Council. I thought it was put forward as an important measure on which the Government were anxious, as in 1872, to obtain the unfettered opinions of everyone present; and if I have erred in too candidly submitting mine, I trust it may be recognised that I have been influenced by no spirit of factious opposition; far from it. I have said what I have said only in true loyalty to the Government. Being called here, I felt bound, on a point of such vital interest to the country, to place my views, for whatever they might be worth, at the service of

Government. If they were worth nothing, the labour was mine only, and they could be cast aside. If they were worth anything, and served by a feather's weight even to influence the decision of Government, then I should rejoice indeed to have spoken freely, as I feel earnestly, in behalf of what I humbly believe to be the best interests of the country in which I have spent my life, and which I have as truly at heart as the liberal-minded framers of the Bill. In this light, and aiming in effect at the same final ends as do the framers of the Bill, I shall trust, though a seeming opponent, to be eventually recognised as a true coadjutor."

The Hon. Mr. REYNOLDS said :—"My Lord, I shall not detain the Council with more than a very few remarks, but I wish to take this opportunity of expressing my cordial approval of the principle of this Bill. That principle is clearly explained in the Statement of Objects and Reasons, and has been further explained to-day by the hon. member in charge of the Bill. It is simply this, to do away with all judicial disqualifications which are based upon mere distinctions of race. What we have to look at in a Judge or a Magistrate is, not his colour, but his character; not his pedigree, but his ability and his integrity. I was a member of the Select Committee last year on the Bill to amend the Code of Criminal Procedure. The question of the exceptional position of European British subjects under the criminal law was raised in the course of the discussion upon that Bill; but it was brought before the Council in a form, and at a stage of the proceedings, which precluded us from taking it into consideration, except at the risk of deferring the passing of the Bill to another session, and thus delaying the introduction of those useful reforms which have now become law in the amended Code of Criminal Procedure. But a promise was then given by the Government that the matter should not be lost sight of; and I presume that the Government had this promise in mind when it was determined to introduce the present Bill.

"I not only accept the principle of the Bill, but I entirely approve of the system on which it is proposed to carry that principle into effect. This is a Bill for levelling up, not for levelling down. It does not take away from Englishmen the cherished right of being tried by their peers, but it declares that a Magistrate shall not be precluded from being deemed the peer of an Englishman merely because he happens to be a Native. In the criticisms which have lately been poured out upon the Bill, it has been confidently asserted that this is a measure for removing a mere sentimental grievance; for dealing with a difficulty which may arise at some future time, but which has not yet assumed a practical shape. The authors of those criticisms must have been imperfectly acquainted with the facts of the case. In August last, Mr. Romesh Chunder Dutt, a Covenanted Civil Servant, was appointed to officiate as Magistrate and Collector of Balasore, and he has now been again appointed to officiate as Magistrate and Collector of Bâkirganj. Mr. Dutt is an officer of some distinction in the service to which I have the honour to belong. He stood second in his year at the final examination in England; he is a barrister-at-law; he has filled subordinate appointments with credit; and he has written ably and successfully on economic questions in Bengal. It is something more than a sentimental grievance that such a man, who is thought competent to hold the chief executive charge of a district, should remain under a legal disqualification for exercising the powers of a Justice of the Peace. Such a disqualification hampers the Government in the selection of its officers, and weakens the hands of justice, and I should rejoice to see it removed from the Statute-book.

"If, therefore, the motion before us to-day, instead of being merely a motion for the publication of papers, had been a motion to refer the Bill to a Select Committee, I should have had no hesitation in voting in favour of it. I do not say that I am entirely satisfied with the provisions of the Bill. I feel considerable doubt whether the first section has not been too widely drawn, and whether it would not have been better to restrict the operation of the measure to officers, whether Covenanted Civilians or not, who might be actually appointed to be Sessions Judges or District Magistrates. But points of this kind do not touch the principle of the Bill, and the Select Committee would be the proper place for their consideration.

"It is, of course, a further question whether, in view of the determined opposition which this measure has encountered, it would be prudent in the Government to make any further attempt to pass it into law. It appears to me that this is primarily a question for the Executive, but I imagine it is quite within the competence of this Council, as a legislative body, to say that, though the abstract principles of a measure may be equitable and right, it would be impolitic and inopportune to make them part of the law of the land. That, however, is not a question which we are called upon to consider to-day. If the present ferment should subside; if the passions which have been aroused,

and the misrepresentations which have been made, should disappear before a calm consideration of what the Government really proposes to do, and what the effects of its legislation are likely to be, I should gladly give my vote, when the time comes, for passing into law a measure based upon the principle of this Bill. But if, on the other hand, postponement and reflection should intensify the feeling which undoubtedly exists to-day; if it should be made clear that the deliberate verdict of the European community in India is opposed to any such legislation as this; if the appeal to Philip sober, which is now to be made, should be dismissed on the merits of the case,—the Government would undoubtedly incur a serious responsibility by asking this Council to pass the Bill.”

The Hon. DURGÁ CHARAN LÁHÁ said :—“ My Lord, this Bill, in my humble opinion, is a move in the right direction, and I deeply regret the feeling which it has evoked.

“ It seems to me absurd to suppose that the Native officers who were deemed qualified to hold the responsible post of Magistrate and Judge, and to sit in judgment upon millions without distinction of rank, were not competent to exercise jurisdiction over European British subjects in criminal matters.

“ As to race prejudice, which has been already referred to, I for one think that it has little or no existence in fact. With the progress of English education and increased intercourse with Europeans, I am glad to say this feeling has no place in the minds of educated Natives, and that any apprehension as to failure of justice in their hands appears to me wholly groundless.

“ What is this change, after all, that the Government propose to introduce? It is to give the same powers to a few selected Native Civilians that Englishmen holding the same position already possess. These Native gentlemen have had to pass the same examinations, and are considered by Government competent to perform the same executive duties, as their brother Civilians. If we refuse to put them on an equality as regards judicial powers, we shall, I maintain, be casting an unnecessary slur upon them, and lower them in the eyes of the people whom they have been deputed to rule. Much better, I say, not have introduced them into the service at all, than, once having done so, impugn their probity by saying ‘ You shall perform all the duties belonging to the office of an ordinary Civilian, except that of having judicial powers in criminal cases over any European.’ We must remember that it is only proposed to invest those Native Civilians who have proved themselves to be of unexceptionable probity with the power in question, and, looking at the safeguards that are to be maintained against any possible failure of justice, can any Englishman honestly say that he is afraid that his countrymen will run any greater risk of being unfairly treated at the instance of a Native Judge than they will at that of a fellow-countryman? A Native Civilian would naturally be always most careful and anxious to see that no injustice should happen in the case of a European, as he would know that he would be accused of race hatred or incompetence should any fault be found with his judgment.

“ It has been said that the passing of the amendment will prevent the introduction of British capital and enterprise into this country. I cannot bring myself to believe that anything of the kind will ever happen. The same argument was employed when Act XI of 1836, bringing our European fellow-subjects within the jurisdiction of the Mufassal Civil Courts of the East India Company, was passed, and we now see how the predictions then made have been wholly falsified.

“ The Government of this country has, I am aware, my Lord, been of a most liberal and lenient description for many years past; and all educated Natives are, I am sure, deeply sensible of the great debt of gratitude they owe to the English nation for the conciliatory spirit which has been shown by the rulers of this country, when they might, with impunity, have acted in so very different a manner. The aim and object of the English Government has, I believe, been to make the people of this great Empire loyal and contented subjects of our Most Gracious Queen; and this object has hitherto been gained by the wise policy pursued by your Lordship and your predecessors, of treating all Her Majesty’s subjects, whether Natives of this country or Europeans, as far as has been possible, with equality.”

The Hon. SAYYAD AHMAD KHÁN said :—“ My Lord, as this is probably the only opportunity which I shall have of expressing my views on this important measure, I am anxious to offer a few observations. I am aware, my Lord, that this Bill has been the subject of much discussion by the public Press, and has given rise to excited agitation among the non-official section of the European and Eurasian community, who feel that their liberties are imperilled by the proposed law. I have not the smallest wish to assign unworthy motives to the agitation; and far be it from me to say that the views which

that agitation represents should not be duly considered by the legislature. Never has the Indian legislature been more anxious to consult the views and feelings of the public regarding legislative measures than the present Government of India. With every wish that the views put forward by the European and Eurasian community should be duly considered, I confess, my Lord, I cannot help feeling deep and sincere regret at the attitude which the agitation against this Bill has adopted. Vehement and somewhat unmeasured language has been used by the agitators against my countrymen. I sincerely deplore this circumstance, as much for the sake of the leaders of the agitation themselves as for the sake of the feelings of my own countrymen. And here, my Lord, permit me to express a sincere hope that my countrymen will in no part of India follow the example of those who think that the vehemence of public demonstrations is the best way of submitting arguments and claims for the consideration of the legislature. The people of India, strongly as they feel in favour of the justice, the wisdom, and the expediency of this Bill, need no demonstration in favour of the measure; and, if I know the views of the leaders of Native society, I cannot be far wrong in prophesying that the people of India will not resort to any public demonstrations in support of this Bill. They are content to leave the measure to be decided upon its own merits. As a Native of India myself, with every wish for the success of this Bill, I hope my countrymen will adhere to their present determination to watch the progress of this Bill with calm and respectful silence.

“My Lord, it is not unintelligible to me that the non-official European and Eurasian community, separated as they are by the distance of time and space from those influences which secure the progress of political thought in England, should in the circumstances of India attach exaggerated importance to distinctions of race and creed; that they should upon such occasions emphasise the fact of their belonging to the ruling race; that they should claim for themselves especial provisions in the general law of the land. My Lord, all this is intelligible to me; but, at the same time, I cannot help feeling that a good deal of the opposition offered to the Bill arises from inadequate information in regard to the history of Indian legislation in matters of a similar nature, and from a misapprehension of the small change which this Bill proposes to make in the existing law. My Lord, I do not claim to be an authority on questions of constitutional law; but I may safely doubt the legal accuracy of the contention, which has been put forward elsewhere against this Bill, that the European and Eurasian subjects of the Queen Empress in India have any such constitutional rights as would place them above the jurisdiction of the Indian legislature. As an humble member of the Indian legislature myself, I would repudiate any such limitation. We derive our powers from the great Parliament of England; and, so long as we do not exceed those powers, it seems to me erroneous to doubt the legislative authority of this Council in all matters connected with India. History repeats itself, and we have in the present agitation against this Bill a repetition of the arguments and sentiments employed by the alarmists of many years ago, when Native Judges presiding in the Courts of the East India Company were empowered to try civil suits to which Europeans and Eurasians were parties. My Lord, I hope I may, without fear of contradiction, say that the exercise of civil jurisdiction by Native Judges in cases to which Europeans are parties has not given rise to any injustice, not even to complaint on the score of national differences. The truth is, that the fears of the alarmists of those days were unfounded, and their prophecies were bound to prove false. At this moment, throughout British India, Native Judges exercise civil jurisdiction over Europeans in a manner which certainly is not open to the charge of being influenced by race distinctions. But then, my Lord, it is sometimes urged that civil jurisdiction is vastly different to criminal jurisdiction; that the former affects property only, but the latter affects personal character and liberty; and that, whilst the European and Eurasian community may be willing to subject themselves to the civil jurisdiction of Native Judges, it does not follow that they should do the same in criminal matters. My Lord, I confess I am unable to see the reason upon which such distinction is based. The decrees of Civil Courts can reduce a man from opulence to poverty, and there are some branches of civil jurisdiction which not only relate to personal relations, but include the power of personal arrest, and, in the interests of justice, authorise a procedure similar to that provided for Criminal Courts. The process of arriving at conclusions as to the facts of civil cases is much the same as in criminal cases. The same law of evidence in India regulates the investigation of truth in Civil and Criminal Courts. The judgments of Civil Courts may stain the reputation and ruin the character of parties nearly as much as sentences passed by Criminal Courts; and it seems to me that there is no substantial foundation for drawing a distinction in principle between judicial powers

of the two classes of Courts, or for attaching greater importance to one class of jurisdiction than to the other. If probity, justice, and absence of race bias are found among Native Judges in civil matters, it is difficult to perceive why the same qualities should not mark their administration of criminal justice in cases in which Europeans and Eurasians are concerned. As I understand the existing law, all Native Magistrates already exercise jurisdiction in criminal matters in cases in which Europeans are complainants and seek redress from the Courts as injured parties. I have never yet heard that European British subjects have any objection to resort to Native Magistrates for redress; indeed, they do so without any hesitation. If this is so, there seems no reason why the same confidence should not be shown to those tribunals in cases in which complaints are brought against European British subjects. Counter-charges are not uncommon in criminal cases. Magistrates competent to give redress ought to be competent also to award punishment; and it seems unreasonable and unfair for any section of the community to say, 'We will go to Native Magistrates for redress, but we will not submit to be tried by them.' Indeed, my Lord, it is hardly necessary to say that, even under the existing law, Natives of India exercise a good deal of criminal jurisdiction over European British subjects. Even outside the Presidency-towns, I believe it is not a rare occurrence that European British subjects, appearing as defendants before Native Magistrates, waive the exceptional privilege accorded by the existing law. There is no judicial disqualification based on race distinction in the powers of the Native Judges of the High Courts and Magistrates in Presidency-towns; and I need have no fear of contradiction in saying that Native officers, when entrusted with criminal jurisdiction over European British subjects, have performed their duty with honesty and efficiency, and without any bias arising from distinctions of race or creed. Indeed, my Lord, in educated minds, employed in the solemn and sacred duty of administering justice, the claims of humanity at large to the protection of law, and the dictates of conscience, leave no room for any other considerations. In the neighbouring island of Ceylon, which forms a part of the vast Empire of Britain, I believe I am rightly informed, Native Magistrates and Judges exercise criminal jurisdiction over European British subjects. Judicial disqualifications based on race distinctions are unknown in that country. Yet British capital and British commercial enterprise, far from being driven from that island, have had considerable scope in that colony. The interest of coffee-planters in Ceylon is, so far as I know, in no sense inferior to the interest of indigo-planters in Bengal; and the people of Ceylon are in no sense less Asiatic than the people of India. Nor would their staunchest patriot in Ceylon claim for his countrymen a higher position in the scale of civilisation than he would concede to the people of India. Yet the existing law of British India in regard to criminal jurisdiction over European British subjects is behind the law of Ceylon, and, my Lord, I do not think it unreasonable for the people of India to feel that the time has arrived when the necessity of improving the law has become urgent.

" So far, my Lord, I have endeavoured to show that the proposed law is no innovation in principle, that the fears of the opponents of this measure are exaggerated and ill-founded, and that the example of Ceylon furnishes a practical illustration of the argument that the removal of judicial disqualifications, based entirely on race distinctions, will not be attended by any injury to the sacred cause of justice. And, my Lord, I may here repeat that the scope of the Bill seems to have been greatly misunderstood by the promoters of the agitation against it. As I understood the Bill, it does not propose to invest every Native Magistrate with power to try European British subjects. It is only in the case of those Natives of India whose recognised probity and ability have enabled them to achieve positions in the Judicial Service equal in rank to English officers of the higher order that the Bill proposes to remove judicial disqualifications based on race distinctions. The number of such Native officers is very limited; and the Bill cannot, therefore, in any reasonable sense, be regarded as precipitate or calculated to cause any serious practical change in the present machinery of the administration of justice.

" But, my Lord, putting aside these considerations, it seems to me that there is much fallacy in the argument which attaches so much significance to race distinctions. What the people obey in countries blessed with a civilised Government is, not the authority of individuals, but the mandates of the law. So long as the law is just, impartial, and humane; so long as the proper administration of that law can be secured, the nationality of those who carry out the law should be of no consequence even to sentimentalists. What requires respect, submission, and obedience is the authority of the law, and not that of individuals, and even those who regard the people of India as not entitled to

equality with themselves might, if they only consider the question calmly, feel that Native Magistrates are only the servants of the State, charged with the duty of carrying out the behests of the law. It is the duty of the State to provide for the proper administration of the law. To secure this object, the State has to choose the best available agency, and it seems a somewhat untenable and unjust proposition for any subjects of the State to insist that, in the choice of officers, Government shall confine itself to any particular race or section of the community. The whole question raised by the Bill, in my humble opinion, practically amounts to what I have just said. It is a matter the principle of which requires no new decision. The question was discussed and it was decided, and decided nobly, when the magnanimity and justice of England accorded to the people of India rights of employment in the service of the State on the same footing as Englishmen themselves. That noble decision has, in recent years, received practical effect, and administrative expediency requires the moderate change which this Bill proposes.

“ But, my Lord, this Bill has in its favour considerations of a higher order than even administrative expediency. I allude to those noble principles of freedom, justice, and humanity which have their home nowhere as much as in the bosoms of the nation which first came forward to release the slave from his thralldom; which first announced to the people of India that, in matters of constitutional rights, distinctions of race and creed should have no place in the eye of the law. Never in the history of the world has a nation been called upon to act up to its principles more than the British in India. The removal of disabilities under which certain sections of the community laboured in England in regard to constitutional rights sinks almost into insignificance in comparison to what England has already done in India. The history of Indian legislation is the history of steady progress, of well-considered reforms, of a gradual and cautious development of the noble principle that between British subjects the distinctions of race, colour, or creed shall make no difference in legal rights; that whilst, on the one hand, British rule enforces submission, and expects loyalty and devotion from the people of India, on the other hand, it accords to them rights and privileges of equality with the dominant race. My Lord, I am convinced that it is on account of these noble principles, remarkable alike for their justice and for their wisdom, that the British rule has founded itself upon the hearts and affections of the people—a foundation far more firm than any which the military achievements of ancient conquerors could furnish for the domination of one race over another. History teaches the lesson that nothing is more destructive to the prosperity of a country than that race distinctions should be maintained between the rulers and the ruled. No one can be more anxious than myself that friendly feelings should grow even more than they have already done between the English nation and the Natives of India. Providence has thrown the two races together in a political and, I hope I may also say, social union, which will grow firmer and closer as time goes on. My Lord, if I believed that the legislative measure incorporated in the Bill will prove destructive to the growth of friendly feelings between the two races, I should have deprecated the introduction of the measure. But I can take no such view. I am strongly convinced that, so long as race distinctions find a place in the general law of the land, so long will there exist obstacles to the growth of true friendly feelings between two races. The social amenities of life arise from political equality, from living under the same laws, from being subject to the same tribunals. The caste system in India would, perhaps, never have held its ground so long, if the legislators of old had not framed one law for the Bráhmaṇ and another for the Súdra. Whatever the exigencies of former times may have been, I hope, my Lord, that a century and a half of British rule has brought us to that stage of civilisation when there is every reason for minimising race distinctions, at least in the general law of the land. My Lord, I, for one, am firmly convinced that the time has come when the entire population of India, be they Hindú or Muhammadan, European or Eurasian, must begin to feel that they are fellow-subjects; that between their political rights or constitutional status no difference exists in the eye of the law; that their claims to protection under the British rule in India lie, not in their nationalities or their creeds, but in the great privilege, common to all—the privilege of being loyal subjects of the august Sovereign whose reign has brought peace and prosperity to India, and made it a place suitable for commercial enterprise, and for the pursuit of the arts and sciences of civilisation. My Lord, as this is probably the last occasion on which I shall ever address the Legislative Council of India, I cannot conclude my observations without saying that your Lordship's administration is to be heartily congratulated upon having brought forward a measure which, I am convinced, will go a great way to remove

invidious race distinctions, and ultimately promote good feeling, mutual respect, and sympathy between the rulers and the ruled in this land of many races and many creeds.

The Hon. Mr. HUNTER said :—My Lord, after very careful consideration, I feel constrained to support this measure. In doing so, however, I hope that I shall not disregard either the expressions of disapproval which have reached us from without, or the arguments which have been so skilfully arrayed against the Bill in Council to-day. I agree with the opponents of the measure, that there is a body of personal law peculiar to European British subjects in this country—a law which accords to them highly-prized exemptions and privileges. I agree that there is likewise a personal law peculiar to certain classes of our Native subjects—a law which is equally valued by them. I agree that, as we have respected the exemptions and privileges secured to our Native subjects by their personal law, so we are bound to respect the exemptions and privileges enjoyed by European British subjects under their personal law. I am prepared to go further, and to maintain that, in the early days of English rule in India, the personal laws of the various classes formed the main body of law administered in our Courts. The history of Anglo-Indian legislation is the history of the absorption of these personal laws peculiar to classes into a common system of law applicable to all. By this process of absorption, the personal law of each class has been gradually but steadily curtailed. It is this process of absorption which supplied what the Marquis of Wellesley termed the “active principle of continual revision” that struck him as the salient feature of the Bengal Regulations in 1805. During the last 80 years the process has gone on at an accelerated pace, until the special privileges now left to the Natives of this country, and the peculiar exemptions still claimed by European British subjects residing within it, are a mere fragment of the privileges and exemptions which those classes severally enjoyed when Lord Wellesley delivered his Discourse.* At each important stage in the process, there has been an outcry from the class whose personal law it has curtailed. Indeed, no class of men can be expected to part with their special privileges without opposition. It seems to me that a Government is bound to listen with great respect and sympathy to such an opposition, and that it ought to refrain from such changes, except when they are clearly demanded by the common weal. But when such a change becomes really necessary for the better administration of the country, then I hold that Government is bound to make it; however much it may regret that it has to purchase a benefit for the whole body of its subjects, at the cost of the natural resentment of a section of them.

The curtailment of class distinctions which this Bill will effect is no isolated act. It forms one of a long series of measures absolutely inevitable in moulding the laws of the various races, from which our administration of justice in India started, into a common body of law applicable to them all. Permit me for a moment to remind the Council how this process has affected our Hindú and Muhammadan subjects. The Charter of 1753 expressly exempted suits between Natives from the jurisdiction of the English tribunals, then styled the Mayor’s Courts.* The Governor General guaranteed in 1772 their own laws to the Natives, and provided that Maulvís and Bráhmans should attend the Courts to expound those laws.† By the Statute‡ of 1781, the British Parliament secured the Hindús and Muhammadans, not only in their law of inheritance, succession, &c., but also in “all matters of contract and dealing between party and party.” The same Statute guaranteed to them their domestic law of the *patria potestas*, and the punitive sanctions of caste. It provided that no act done, and therefore no penalty inflicted, in consequence of caste rules should “be held and adjudged a crime, although the same may not be justifiable by the laws of England.”

I shall not detain the Council by a further enumeration of the guarantees granted to the Natives of this country, or of the legislative process by which those guarantees were one by one infringed. The Natives still retain a large portion of their domestic law and certain privileges, such as the exemption of women of position from appearing personally in Court. But in the ordinary affairs of business they have been brought under English-made law. The Maulví or Bráhman assessor has no longer a place in our Courts. For Native law an usage in dealings “between party and party,” we have imposed the Code

* Charter of George II. granted in 1753.

† Plan for the administration by Warren Hastings, 1772, Rule 23, afterwards incorporated in the first Bengal Regulation, dated 17th April 1780.

‡ 21 Geo. III., c. 70.

of Civil Procedure and the Contract Act. We have weakened the *patria potestas* by curtailing the punitive powers of the head of the family, especially in regard to the female members. We have undermined the sanctions of caste by treating as offences the graver penalties inflicted for breaches of its rules, notwithstanding our express pledge to the contrary. We accepted the system of the Muhammadan criminal law; we have substituted for it a system of criminal law of our own. Special classes have had their ancient privileges curtailed in a special degree. The Hindú law accorded to the Bráhmans a status which enabled them to exercise spiritual powers, yielding lucrative temporal results. We no longer permit the employment of the spiritual powers for compulsory purposes. If a Bráhman erected a *kurh*, and some credulous old woman killed herself thereon, our regulation law tried him for murder. If he enforces a debt, or extracts a charity, by fasting outside a man's door, the English Magistrate locks him up in jail. We have deprived the sanctity of Brahmanhood of much of its pecuniary value, and subjected its spiritual terrors to the Penal Code.

In all this the Government has done wisely and well. In doing so, however, it has had again and again to encounter a clamorous but quite natural opposition from those whose ancient privileges or personal law it curtailed. I shall not cite instances where the gain to the community at large was beyond question, but one in which the necessity for a change seemed doubtful to many. There are no branches of the Native law more solemnly guaranteed to the Hindús than those which deal with marriage and inheritance; and there is no principle more clearly established than the deprivation of rights to family property in the case of a Hindú becoming a convert to another religion. Yet a series of *Lex Loci* Acts, initiated in 1832, and ending within our own experience, have repeatedly interfered with the most cherished feelings of the Natives in these matters. In each case since 1842, the Natives have struggled against the change. With them, inheritance is not a mere question of gain or loss in this world, but involves the safety of the souls of their ancestors, and their own happiness or misery in the future life. They have pleaded Parliamentary guarantees, the solemn declarations of the Indian Legislature, the established usage of a century of British rule. With one temporary exception, they have pleaded in vain.

The personal law and exemptions peculiar to European British subjects in India have undergone scarcely less important curtailments. The legal status of the non-official Englishman in India commences, for practical purposes, with the Charter of 1813.* During the preceding half century, the English non-official in rural Bengal had passed through various stages, as an interloper, a licensed adventurer, a subordinate agent of the East India Company, and a partner, recognised or unrecognised, of its servants in their private trade. He might execute a bond making himself amenable to the Company's Civil Courts, and after 1787 he had to do so before he was permitted to reside in the interior. In criminal matters he was subject only to the Supreme Court and Her Majesty's Justices of the Peace in Calcutta. He practically, therefore, remained outside the Company's system of administration, as an unmanageable unit of sturdy independence and growing importance in whatever district he settled, disliked and often unfairly treated, but very difficult to reckon with. In matters of criminal jurisdiction he was under the surveillance of the rural police instead of being amenable to the rural Courts. As late as 1817 a Regulation was passed requiring the police to submit yearly to the Magistrate of the district a list of all Europeans residing within it. Indeed, until the Government passed to the Crown, each police-inspector had to report the arrival of every non-official European who came within his circle.

The Charter of 1813 threw open the Indian trade to private enterprise, and at the same time created a jurisdiction over the Europeans who might embark in the business. It provided that every British subject living at a distance of more than ten miles from the Presidencies should be amenable to the Civil Courts of the East India Company in like manner as Natives of India. It also empowered the Governor General to appoint Justices of the Peace from among its Covenanted Servants, or other British residents, with petty criminal jurisdiction over British subjects, not exceeding a fine of Rs. 500, or in default two months' imprisonment. As the number of Europeans increased in India, the powers of the Justices of the Peace were extended by a Statute of George IV.† All powers, whether civil or criminal, were exercised only by Europeans, because at that time the Natives of India had been excluded from the higher judicial offices which they

* 53 Geo. III. c. 155.

† 9 Geo. IV. c. 74, sections 92, 97, 113, 121, 124.

held in the early days of the Company, and had not yet been incorporated as a branch of its Uncovenanted Civil Service. But when the Company withdrew from its trade after 1813, it set itself to the task of improving its rural government. By a series of measures between 1821 and 1836, it increased the powers of its Native Judges, and admitted the Natives of India to a large share of the civil judicial administration. It followed that, if Natives were to do the staple work of civil justice, they must exercise jurisdiction over the whole body of inhabitants within their district. By a series of laws in 1836, 1839, and 1843, their jurisdiction was therefore extended over European British subjects. It was enacted in comprehensive terms that, thenceforth, no person should by reason of place of birth, or by reason of descent, be in any civil proceeding exempted from the jurisdiction of any of the Company's Civil Courts.

The European community bitterly resented these laws, and opposed every effort to bring them under the jurisdiction of the country tribunals, as distinguished from the Supreme Court in Calcutta. The most important of them they stigmatised as the Black Act. "The Black Act," writes an eye-witness, Mr. William Tayler, an eye-witness not at all likely to favour Bengal officialism, "was the cause of an agitation which may fairly be said to have convulsed Indian society for a time. Several barristers took the lead; public meetings were called; scurrilous articles filled the columns of the daily journals. One impassioned orator hinted that Mr. Macaulay (the Legal Member of Council) ought to be lynched at the very least." My Lord, it marks the difference between Englishmen in India at that time and at the present day, that although their feelings on questions of class privilege remain equally strong, the articles in the public journals are no longer "scurrilous"; their public meetings cannot fairly be described, in Mr. Tayler's words, as "fierce and uproarious"; and their resistance is not now confined to Calcutta, but, with the extension of British enterprise, is diffused over many districts. The jurisdiction of the Company's Civil Courts and of the Native Civil Judges, which Englishmen so loudly opposed fifty years ago, has done more than any other series of administrative measures to protect British capital, and to render British enterprise possible in rural India.

During the same fifty years, the special privileges of European British subjects in matters of criminal jurisdiction have also been curtailed. Perhaps the most important attempt under the Company in this direction was that of Lord Dalhousie's Government. In 1849, it prepared a draft Act declaring that all British subjects, resident outside the towns of Calcutta, Madras, and Bombay, should be thenceforth amenable to the Magistrates and Criminal Courts of the East India Company; save, only, that no such Magistrate or Court should have the power to sentence any of Her Majesty's natural-born subjects to death.* It made no proviso as to the Magistrate being a Justice of the Peace. On the contrary, it expressly stated that "the word Magistrate, as used in this Act, shall be understood to mean every officer, however styled, who has power to exercise any or all of the powers of a Magistrate."† I need hardly point out that the Bill now before the Council has a very much narrower scope. Lord Dalhousie approved of the proposed extension of the criminal jurisdiction over European British subjects, but thought that the measure should be postponed till the amending of the criminal law was effected by the Penal Code. His view prevailed. Shortly after the country passed to the Crown, the Penal Code became law, and the question of jurisdiction could be considered on its own merits. This was last done on the revision of the Code of Criminal Procedure in 1872. Before that year, the Natives of India had been admitted, by open competition in England, into the Covenanted Civil Service; and, in the natural course, would rise, as Magistrates and Judges, to the highest posts in the administration of criminal justice in their respective districts. The question which had to be decided in 1836, with regard to granting civil jurisdiction over European British subjects, came up for consideration in 1872 with regard to criminal jurisdiction. The Legislature, in 1872, determined to give a substantial jurisdiction over European British subjects to full-power Magistrates, being Justices of the Peace, and to Sessions Judges, provided that such Magistrates and Sessions Judges outside the Presidency-towns should themselves be European British subjects. By a narrow majority, the Legislature abstained from giving these powers to the Native members of the Covenanted Civil Service. How narrow the majority was, may be estimated from the circumstance that, if a single one of its members had voted the other way, the minority would by the President's casting vote have become the majority.

* Draft Act read for the first time in Council on the 26th October 1849, section 1.

† *Idem*, section 6.

My Lord, I think that the Legislature decided wisely in 1872; but that we should decide wrongly if, in 1882, we supported its decision. The circumstances of the country at large, and of the special class of public servants to whom jurisdiction will be given, have altered during the ten years. The administrative necessity for the change, which was then remote, has now arrived, and will soon become urgent. Even before 1872, criminal jurisdiction over British subjects had been given to Native Magistrates in Calcutta, and both Hindú and Muhammadan gentlemen have exercised these powers in the Calcutta Courts. But it was not considered safe to entrust the same powers to Native Magistrates in the districts, because it was feared that public opinion, which would check any miscarriage of justice in Calcutta, might not act with equal force upon District Magistrates. I think that this was a good argument in 1872. But new enterprises have since then brought an influx of Englishmen into the interior, and created an amount of independent English opinion in the districts which could not have been anticipated in 1872. I, for one, read with pleasure the telegrams which have poured into *The Englishman* during the past month, from every part of Bengal where Englishmen reside. Those telegrams show that our non-official countrymen are strongly opposed to the measure which I advocate. But they also show that Englishmen in the interior have now the means of expressing the public opinion of their class with such promptitude and with such force as to constitute the strongest possible guarantee against the abuse of magisterial powers, whether vested in European or in Native hands. Not only is English public opinion in the districts stronger, but English public opinion in Calcutta acts much more directly upon the District Magistrates. Since 1872, the length of railways open in India has increased from a little over 5,000 to close on 10,000 miles. The number of private telegrams sent has increased from 600,000 to 1,337,526. The number of post-offices and letter-boxes has, during the same period, multiplied from under 5,000 to more than 11,000; and the number of letters, newspapers, &c., from 89 millions to 158 millions. Districts formerly isolated have now speedy and constant communication with the capital. Nor is it too much to say that English public opinion in the remote province of Assam can now be brought to bear as powerfully and as immediately upon the Central Government, as the English public opinion of Calcutta could twenty years ago.

The circumstances of the special class of public servants, to whom it is proposed to give jurisdiction, have also changed. In 1872, the Native Covenanted Civilians appointed by open competition in England were untried men, who had yet to prove their fitness for the offices entrusted to them. They have, during the past ten years, abundantly proved it. They have established their reputation as painstaking, impartial officers, and in a special manner they have shown their capacity for sound judicial work. Nevertheless, if a distinct administrative necessity had not arisen, I should decline to support a change which must be painful to an important section of the community. But such a necessity has now arisen. The Council has before it the reports from the various Local Governments in favour of this measure. I shall not, therefore, say more with regard to them, than that they present to my mind an overwhelming preponderance of opinion which it is difficult for the central Government to disregard. But I shall show, by one or two individual instances, the way in which the present anomalous state of things works in the rural districts. The Native Civilians have now reached a stage in their service when they must become, in the natural course, District Magistrates and Sessions Judges. We have guaranteed to them equal rights with their English brethren, yet they must be excluded from those offices in the more eligible districts where English private enterprise exists, and they must be turned out of those offices in any district into which English private enterprise comes. Let me illustrate this by two examples; one taken from Bengal, the other from Bombay. On the 17th January last, a Native Civilian was, in the ordinary course, appointed Joint Magistrate, with powers of a Magistrate of the first class, at the important station of Dháká. On the 23rd January, he received a letter from the Secretary to the Bengal Government, cancelling the appointment and transferring him to a less eligible district, on the ground that the opening out of the Dháká and Maimánsingh railway was bringing a number of Europeans into the Dháká district. The gentleman thus disqualified had won the second place in his year, by open competition in England, from among several hundred candidates; he is an English barrister, and he had proved his fitness for the post from which he was turned out by twelve years of service. In the Bombay Presidency, a Native Civilian holds the important office of District and Sessions Judge of Kanára. His head-quarters are at Kárwár, the coast terminus of the railway which, some time ago, was proposed to be constructed from the Dhárwár cotton country. If this scheme should be revived and the railway sanctioned, the Sessions Judge of Kanára would, under the exigencies of the existing law, have to be

turned out of his district. Let us see what this practically means. The gentleman in question is Mr. Tagore. After a distinguished education, both here and in England, he has given about twenty years of unblemished service to the Government, and has established a high reputation as a Judge. He is a near relative of our late colleague, the Mahārājā Sir Jotindra Mohan Tagore, who, during an unusually prolonged period, assisted this Council in making the laws of India. The well-earned encomiums in which your Excellency expressed your sense of the services thus rendered are still fresh in our memories. Yet we are told that we must not entrust to a member of the same noble house, notwithstanding his training in England and his twenty years of proved integrity as a Judge, the power of sentencing a European British subject to a short term of imprisonment. This, too, although the European British criminal has the right of immediate appeal from any sentence of imprisonment, however brief, and from any fine, however small. If it were necessary I could multiply examples. Unfortunately the time has come when such examples will year by year multiply themselves, unless the existing law is changed.

Since this Bill was introduced, I have taken occasion to consult several of the leading Native Civilians who were appointed by competition in England. They complain that under the present law they will be excluded, as Magistrates and Sessions Judges, from the advancing districts into which British enterprise comes; and that they will be condemned to backward or remote districts where they will have less opportunity of distinguishing themselves, or of proving their fitness for higher offices. They urge that in Bengal, for example, this means that they will be shut out, as Magistrates and Judges, from the healthy Province of Bihār, and condemned for the most part of their career to the miasmatic Delta. The pleasant regions of Tirhut and Patna will be denied to them; the swamps of Bakirganj and Noakhali will be permanently at their disposal. They contrast this state of things with the long series of declarations by Her Majesty's Government presented to Parliament, beginning with the Queen's Proclamation to the Chiefs and people of India in 1858, and ending with the Despatch of the Secretary of State, dated the 10th July 1879. They rebut the plea that it is not essential that the Magistrate of the district should have power over Europeans if his Joint-Magistrate has these powers, by bringing forward a long list of districts in which there is no Joint-Magistrate. They expose the fallacy of the argument that in cases where a Sessions Judge has not these powers a European criminal can easily be transferred to another district. In the Bombay case which I have cited, a European criminal, together with the prosecutor and witnesses, would either have to be sent several hundred miles by sea to the Presidency-town, or the whole party would have to be marched inland, under guard, nearly 100 miles, in part across a tract malarious during the rains, to the headquarters of one of the adjoining districts. The present law not only acts as a disqualification to the Native Judge, but it operates as a hardship to English criminals, prosecutors, and their witnesses. The fact is, as shown by the Dháká case, that the Native Magistrate and Judge must either have jurisdiction over Europeans, or they must go elsewhere. They urge that Government will have to regulate its appointments, not by the merits of an officer, nor by his general fitness for a district, but by his power to deal with a small exceptional class of cases occurring within it. Yet by the orders of repeated Secretaries of State, orders formally placed before Parliament, the Native officers thus disqualified will in time form a substantial proportion of the whole Covenanted Civil Service. They point out that this is not only an injustice to themselves, but also a source of weakness to the Administration.

The admission of the Natives to the Covenanted Civil Service was one of the results of the Queen's Proclamation when Her Majesty assumed the Government of India. In that Proclamation she commanded that her subjects, "of whatever race or creed, be freely and impartially admitted to offices in (her) service, the duties of which they may be qualified, by their education, ability, and integrity, duly to discharge." The Covenanted Native Civilians have now reached a point in Her Majesty's service when the Government must decide whether it will or will not grant them criminal jurisdiction over European British residents, as the Company had in 1836 to decide whether it would grant civil jurisdiction over such residents to the Uncovenanted Native Servants. The Government has in 1882 simply reached the same conclusion as that at which the Company arrived in 1836. But the present Bill provides the most ample safeguards against the abuse of the powers which it confers—safeguards so ample, stringent, and complete as to destroy any further analogy between the action of the Legislature in 1836 and in 1882. For the present, I shall only deal with the case of Covenanted Civilians who have entered the service by competition in England. They are the class to whom

the Bill is chiefly directed ; they are the only class in regard to whom the Local Governments appear to have yet been consulted. So far as a scrutiny of the Civil List enables me to form an opinion, there are not above two or three Native officers, with the exception of those in the regular Covenanted Service, on whom any Local Government would confer the powers granted by this Bill for many years to come. At any rate the Council has no evidence before it with respect to the other classes mentioned in the Bill. And I, for one, am not prepared to support, by speech or vote, the curtailment of privileges on which my countrymen set a high value, without clear evidence that the sacrifice is demanded on behalf of good administration and the common weal. Such evidence may be forthcoming at the proper stage, when the Bill reaches the Select Committee. But, meanwhile, I speak only of the principal class of Native public servants whom the Bill will affect, namely, those who have won their positions by open competition in England.

I beg the opponents of this measure to consider the very limited powers which the Bill conveys, and the stringent safeguards which it provides against their abuse. The Native members of the competitive Covenanted Service are a select body of men, who have won their way into public employment by exceptional exertion, and by exceptional abilities. In youth they so far overcame the inertia of the climate, and the prejudices of their race, as to set forth to a country on the other side of the globe, on the chance of securing an honourable career by open competition. Most of them had already earned distinctions at Indian Colleges and Universities. In England they had to partially re-educate themselves on a Foreign model. They had to compete in an examination framed to suit an educational system different from that on which they had been trained, and they won their appointments from among a crowd of competitors. Many of the Native Civilians thus selected are more English in thought and feeling than Englishmen themselves. After their arrival in India they have to pass through further tests, and to prove their fitness by years of faithful service, before they can receive the powers which the Bill confers. Even then, it is only if the Local Government is satisfied of the fitness of the individual officer that the powers are granted to him. And what, precisely, are these powers ? The highest are those granted to Magistrates of districts and Sessions Judges, officers of about 13 to 25 years' standing. A District Magistrate can sentence a Native of India to two years' imprisonment, with fine, or, in cases of cumulative sentences, and on default of payment of the fine, to four years. This Bill would only empower him to sentence a European British subject to a term not exceeding three months. A Sessions Judge may sentence a Native of India to death or transportation for life. This Bill empowers him to sentence European British criminals to only one year. A Native criminal can appeal only to certain Courts, and only against sentences of a certain degree of severity. The European criminal by this Bill is allowed the right of appeal to either the District Court or the High Court at his own option ; and he may exercise that right against a sentence of a Magistrate or Sessions Judge, however small—against a fine of one rupee, or a single day's imprisonment. The European British subject is further protected by his race privilege of the writ of *habeas corpus*, and in any case important enough to come before the Sessions Judge, by trial by jury. Nothing can be further from the truth than the statement that this Bill disregards the different degrees in which the force of public opinion acts as a check upon miscarriages of justice in Calcutta and in the rural districts. A Native Magistrate sitting in Calcutta can at present sentence European British subjects to two years' imprisonment, and to a fine, with a right of appeal only from sentences of a certain gravity. This Bill confers on the same officer, if he is promoted to be Magistrate of a district, the power of sentencing a European British subject to only three months' imprisonment, with the privilege of appeal from every sentence, however small.

I would ask the opponents of the measure whether they seriously believe that these safeguards are not ample for the purposes of justice. If they can suggest further safeguards, I feel sure that this Council will impartially listen to their proposals. I know it is hard for any class of men to part with its special privileges. The hardship is sometimes a matter of fact, and sometimes a matter of feeling. The class affected always believes that the hardship is one of fact. Whether Europeans or Natives, they plead the same argument of the thin end of the wedge, and of the total abolition of their class privileges which the change, however small, foretells. This argument was never better set forth than by the Hindús on the passing of the *Lex Loci* Act. They then expressed their belief "that the security in person, property, and religion, hitherto ensured to them, thus undermined in one instance, would be eventually denied to them altogether." The 40 years which have passed since these words were uttered have abundantly falsified

the predictions which they conveyed. Nor have the apprehensions of the European community, on the passing of the Black Act in 1836, been more fully justified. The civil jurisdiction then granted to Native Judges seemed to our countrymen to destroy the sole securities which they possessed for their capital invested in the rural districts, and to threaten the extinction of British enterprise in Bengal. Europeans would be deterred thenceforth from settling in India, and it was vainly attempted to combat this statement by quoting Mr. Mill's evidence before the Committee of the House of Commons. The fifty years which have since passed, and the immense development of British enterprise under the protection of the rural Courts of Bengal, now supply an unanswerable refutation of such fears. Even the abolition of the Grand Jury in the Presidency-towns in 1865 sufficed to awaken serious apprehensions. "On the abolition of Grand Juries," said the circular issued by the Landholders' Association, "there would be no protection to gentlemen from being accused of crimes of which they were entirely innocent, whenever the local Magistrate was supposed to be inclined to believe in such charges, and of being put upon their trial whenever a credulous or prejudiced Magistrate would be found." A correspondent in the *Englishman* predicted that, now that the Grand Jury was doomed, the right of calling a public meeting through the Sheriff "would be the next old institution voted effete." Another begged his countrymen to "beware of the doctrinaire dissectors. Cry out in time," he said, "and that lustily, or we may expect the fate of the eviscerated cat, whose personal objections to the operation are disregarded in the promotion of experimental science." The Public Meeting in Calcutta condemned by a formal resolution "the proposed abolition of Grand Juries in the Presidency-towns; and on the contrary was of opinion that the institution should be extended to the Courts proposed to be established in the interior of India." One speaker regarded the abolition of the Grand Juries as "the thin end of the edge" * * * * "which threatens to bring down and destroy the whole fabric of our constitution." The *Englishman* newspaper, which has so ably brought to a focus the opposition to the Bill now before the Council, quoted with approval, in 1865, Sir Eardley Wilmot's protest against "any interference with this 'bulwark of the nation.'" My Lord, there have been individual miscarriages of justice since the abolition of the Grand Jury, as there were when it still flourished. But I feel sure that the English citizens of Calcutta, old enough to remember the state of things before 1865, will agree with me that the abolition of the Grand Jury has been a boon to the English community of the city, and a source of strength to the working of the whole jury system in the Presidency-towns.

I believe that the apprehensions now expressed with regard to the present measure will, ten years hence, be found to have been equally groundless. Meanwhile, we ought not to forget that those apprehensions spring from natural feelings of alarm in the minds of an important section of the community. If we can in any way allay those apprehensions, or conciliate those feelings, I think we are bound to do so. The honour of this Council, or the honour of the Government, is not involved in any hard-and-fast resistance on points of detail. Or, rather, the honour of the Government is involved in carrying out a measure which must necessarily be painful to an important class with the utmost consideration that it can show to their feelings. But with regard to the principle involved, I think the time has come when the Indian Legislature is bound to declare itself. At such a crisis, party spirit must run high. Several months will, however, elapse before the Bill can pass into law. During the interval the Council will have time to candidly listen to every argument, and to seriously consider every suggestion. If, in the heat of the discussion, fair arguments give place to ungenerous aspersions, our duty seems equally clear. We must meet obloquy with patience, and, assured of the justice of the measure, we must wait for time to dispel the apprehensions of our countrymen at present, as time has disproved their apprehensions in the past.

The Hon. RÁJÁ SIVA PRASÁD said :—"My Lord, this is the grandest concession to India. I would have called it the coping stone of the liberal policy of the Liberal Government of Her Most Gracious Majesty, whose worthy representative, the liberality incarnate, my Lord, you are; but no one can say to what a height the building is destined to reach during your Excellency's incumbency. So I content myself by simply saying that the measure will be a magnificent addition to the list already long. The distinction of race in the Indian Criminal Procedure was one of the remaining mementos of the narrow policy of an honourable body of monopolist traders, though it might have suited or become a necessity at the time; but now it will be simply incongruous with advanced liberal ideas and the progress of the age. The concession is most unexpected and little asked for, and so the most valuable. I cannot conceal from your

Excellency that the Indian branch of the Aryan race has been the most intolerant towards their conquered, and had no distinction between a conquered and a slave. Up to this time the Súdras, the remnants of the conquered aborigines, who form the mass of the population, are looked down upon by the military, and the then ruling class of Kshatriyas, and the sacerdotal Bráhmaṇs, as worse than slaves. The very name Dás, a corruption of Dasyu, means a slave or thief. Prohibition to wear the sacred thread has been for the poor Súdras a lasting mark of humility and subjection. Manu says, if any Súdra takes into his head to speak Sanskrit, or to teach that language, 'scalding oil' is to be poured into his mouth; nay, 'on killing a cat, a weasel, a peacock, a frog, a dog, a lizard, and an owl or a crow, a Bráhmaṇ should expiate himself by the same penance which he has to undergo for killing a Súdra'—chapter XII., stanza 132. Further, 'having slandered a Bráhmaṇ, a Kshatriya becomes liable to a fine of 8,000 *kauries* (shells) amounting to less than rupee one and a half, but a Súdra merits death'—chapter VIII., stanza 267. Let us see how the Muhammadans treated their conquered. They did not regard the Hindús even as men; hence to massacre them, to enslave their wives and daughters, to plunder their property, to demolish their temples, to deface the images, to force beef down their throats by violence, are the subjects which fill the so-called histories of the time. Even so good-natured a writer as Amír Khusro was, alludes to the Hindús in such contemptuous terms as 'raven-faced' and 'raven-like in nature' (*Zigh-rú va Zagħ Manish*). The administration of the civil and criminal justice was completely in the hands of the kázís, and no Hindú could possibly aspire to be a kází. No matter whether either or both parties were Muhammadans or Hindús, the judgment was invariably pronounced according to the Muhammadan law or Shara. The same Amír Khusro relates in his *Teríkhi Alai* that Alá-ud-dín Khilji once sent for a kází and asked him what was written in the Code of Muhammadan law regarding the Hindús. The kází answered that the 'Hindús were Zimmis (condemned to pay the *Jizya* tax); if asked silver, they ought to pay gold with deep respect and humility; and if the collector of taxes were to fling dirt in their faces, they should gladly open their mouths wide. God's order is to keep them in subjection and the Prophet enjoins on the Faithful to kill, plunder, and imprison them, to make them Mussulmán's or to put them to the sword, to enslave them, and confiscate their property. Abu Hanífa alone permits the levying of the *Jizya*, but the remaining successors of the prophet have uniformly laid down that the Hindús ought to be made Mussulmán's, otherwise lose their heads.' The Emperor smiled, and remarked that he did not know what the Code might prescribe, but that he had issued an edict that only so much grain, milk, and other articles of consumption as would suffice for a year should be left to Hindús, and that they should in no case be allowed to lay by any money. Akbar was the only Emperor who raised the Hindús and kept down the race distinction as low as he could, but that was a matter of necessity. He had seen how his father was driven out from India. He could not reckon on receiving any succour from Central Asia. His only hope for his Empire was with the Hindús, and the Hindús well supported him. Now the days have come that a Hindú is appointed by your Excellency Chief Justice, or Kází-ul-Kuzáat, of the metropolis of the Indian Empire. We Hindús do not consider the British as our conquerors. We do not only acknowledge the divine right of our sovereigns, but find divinity in their person. I will never forget what the Pandits of Benares spoke to Sir William Macnaghten. I was then a boy reading in the Sanskrit College. Lord Auckland came with Sir William. His jamadár, being a Muhammadan, was stopped at the gate. Sir William asked the Pandits how it was that the English were allowed and the Muhammadans not. The Pandits quoted Bhagavat Gita that 'Rulers are divine.' Leaving aside the divinity for the present, is it not a fact that we sought the protection of the British? Jagat Seth Mahtábrai, one of the ancestors of the humble speaker, was one of those three who invited Clive to Murshidábád and helped him to establish the British supremacy in Bengal at the sacrifice of his own life. The idea of any restoration of a Kshatriyan Empire is as far from the bosom of a Hindú, as the idea of restoration of the Roman Empire in the family of Romulus, driving out all the 'barbarian' races across the Danube, is from the bosom of an Italian. Taimuri dynasty was gone; the choice lay between the Muhammadans from the North-West, like Nádir Sháh, who massacred Delhi, or Ahmad Shah Abdali, who massacred Mathura, and the freebooter Pindari Mahrattas. India threw herself under the protection of the British like a sheep running from a tiger and a wolf to her shepherd. We look to our Sovereign Kaisar-i-Hind, not only as Divine ruler, but as our own mother. We take her as our own, and I leave it to the generous Christian feelings of the British nation whether we are still to be treated as a

conquered and subjugated race. The *Indian Daily News* says very sensibly that, 'we shall rise above class questions and race questions, and confess, even it be with some natural reluctance, that the change in the law which is now proposed is practically inevitable. Besides, we have to consider whether determined and narrow adhesion to exclusive privileges is not the most dangerous policy the European community could adopt. For the sake of England in India, and in order to further strengthen and cement the union between the two countries, is it not necessary that Englishmen should give the highest proof in their power of the thoroughness with which they adopt India, and take upon them the defence and advancement of her interests?' The *Statesman* takes the same just and impartial view of the question. Though there is no doubt that a very strong feeling, whether right or wrong, but almost universal, exists against the Bill in the European quarters, as a gentleman was just the other day saying, wherever he went he was asked 'Have you seen that infernal Bill.' They take it as certain that all their countrymen who have to appear before a Native Magistrate will be sent to jail, and the reason they assign for it is the 'widening,' as they are pleased to think, of the breach between the Natives and Europeans. Some say that there is neither newspaper nor High Court with astute barristers in the Mufassal; but I do not know if there is any place in India now beyond the pale of the newspaper influence, or where barristers cannot go; the wire has brought the High Court within an easy reach of everybody. As for a Native's sending a European or his wife to jail, there is no fear of that. If there is any fear, the fear is for his unjust acquittal. Mr. Duthoit, the Judicial Commissioner of Oudh, who is no mean judge of Native character, truly says: 'I do not mean that they (Natives) would be likely, as a rule, to press hardly upon Europeans; I think, on the contrary, that they would, as a rule, unduly favour the Europeans.' Woe to the Native who has a European before him to judge! His position will be most unenviable, and fool he must be if ever he takes into his head not to ask for transfer of the case to some other tribunal or not to acquit the culprit totally. So, whatever the Europeans may have to say against the Bill, they cannot show any good cause for its condemnation, except the domineering race pride, or, as Mr. W. B. Jones says, the 'unreasonable class prejudice,' which cannot brook any idea of equality; but is such a pride to be encouraged? Does it not widen the gulf which we are trying to bridge over? Will it not keep the wound fresh which we want to heal up? The Government is bound to exonerate the integrity of Her Imperial Majesty's Proclamation of 1858. It is true that the Natives will not gain much by this concession. At the same time, it is also true that not the least harm will be done to the Europeans. It may do, I am afraid, some harm to the Natives. This new power may stand, to a certain extent, as a bar in the way of their promotion to a District Magistracy or a Sessions Judgeship; nay, some alarmists see a greater harm looming at a distance; they argue in this way, that, if the Government has broken the acknowledged privilege or personal law of their own countrymen, the Britons, like a straw, how can they be expected to maintain very long our own privileges and personal laws, which, though dear to us, but often approach absurdity in the eyes of the advanced civilisation. Simply an incongruity will be removed. Our European brethren ought to have a little faith upon their European Governors, and to be sure that these Governors will never appoint any one Justice of the Peace unless they know him to be the fittest man before whom, if occasion arises, a European can stand to be judged. Hear what Sir Alfred Lyall says:—

'No European officer is appointed to be a Justice of the Peace or Magistrate of a district or Sessions Judge, until he has been found to be, by experience and character, fitted to exercise the powers and perform the duties which are attached to these offices. During the period that ordinarily elapses before any officer can attain to the position of Magistrate of a district or Judge, or is appointed to be Justice of the Peace, ample opportunities are afforded of forming an opinion as to his qualifications for the offices in question; and he is not appointed to them if he has shown himself to be unfit to perform the duties and exercise the powers belonging to them. The interests of the European British subjects and of the administration would be sufficiently provided for, if the general restriction, under which no one who is not himself an European British subject has jurisdiction over an European British subject, being removed, power be left with the Local Government to appoint Justices of the Peace those Native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The Local Government would then apply the test of personal fitness to each particular case for Native as well as for European members of the Covenanted Civil Service.'

"The worth of the argument or analogy brought forward by my hon. colleague, the learned Dr. Hunter, that, if so many privileges of the Natives have been destroyed, why not this privilege of the Britons also is to follow suit, I leave to your Excellency to

judge. However, I do not know if the Britons also burnt their widows like the Hindús, or killed their infant daughters like them.

"Now, so far, whatever I have said, I have said as a representative of the Native community at large, and have echoed India's voice; but, if your Excellency allow me to express my own individual opinion, may I ask whether this feeling, right or wrong, is to be totally derided and set at nought? I would rather join with the Commissioner of Coorg in saying that 'the provisions of the present law on criminal procedure, which limit jurisdiction to try, for criminal offences, European British subjects to persons who are themselves European British subjects, are wise, and should, for political reasons, be maintained.' I would rather agree with the Hon. D. F. Carmichael in saying that 'after all, there is such a thing as *privilege*; this one is highly valued by those who possess it, and certainly does no harm to the Native population; while its surrender would, in my opinion, cause great exasperation.' I would rather coincide with the Hon. W. Hudleston in saying 'that the proposed extension of jurisdiction would be impolitic, and is not expedient; I am confident it would raise an outcry that would aggravate race friction far more than the removal of the already existing disability attaching to a small number of officials would allay it.' I would rather side with the Right Hon. the Governor of Madras, on whom, if my memory does not fail me, almost the whole brunt of all the Parliamentary debate fell when he was Under Secretary for India under His Grace the Duke of Argyll, when he says such weighty words as 'it is perhaps a pity that a question was raised just now which affects so few people.' There is much truth in Sir James Stephen's remark that 'in countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law, the Hindu has his personal law. Women who, according to the custom of the country, ought not to appear in Court are excused from appearing in Court; Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? That whilst the English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim of absolute identity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with every distinction which race, caste, and religion can create, and passionately tenacious as are its inhabitants of such distinction.' I would rather allow the incongruity to remain untouched, at least for the present, as greater incongruities remain. For instance, a rich Bábú's European coachman can keep as many arms as he likes unchallenged; but the Bábú Sahib, or, if he is so fortunate as being dubbed with some title, his son and brother, have to go every year to the Magistrate's Court for the renewal of the license with his menial servants, and suffer all the indignities and annoyances inseparable from such a procedure. My countrymen (advanced and anglicised) will call me a traitor to my country. The Native newspapers will vilify me; but if the Hon. the Law Member is not afraid of the British lion, wagging his tail and roaring, why am I to care for the bellowings of a few Indian sheep? However, for the present I only desire the Select Committee, when formed, to take both sides of the question into their serious consideration. It is possible that the Select Committee may add some more sugar to the pill. The Committee may think fit to strike off section 2 altogether, or go further, and, striking off clauses (c) and (d) in section 1, change 'invested with the powers of a Magistrate of the first class' for 'District Magistrates or Cantonment Magistrates or Sessions Judges or equal to them in rank as Deputy Commissioners in Non-Regulation Provinces.' I reserve my vote in favour or against the Bill till it comes to that stage. This moment my head, under the dictates of prudence, is in its favour; but my heart—a true heart of a true Native, labouring under a sense of deep obligation and sincere respect to the British nation for all the good it has done to my dear country—is against it.

"Ignorant people—I mean ignorant of facts, though otherwise well educated—may charge me with flattery; but a life's experience cannot be forgotten. How much I value the goodwill of the European British subjects; how much I appreciate their services to the country, and how far I look to them for the protection of our life and property and

the advancement of our welfare, the mention of one single incident, I think will amply suffice. It was, if my memory does not fail me, the evening of the 4th June 1857, when the alarm gun had been fired, all the non-combatant Europeans with their families had assembled in the mint at Benares. A few European gunners were blowing up on the parade some Native regiments of infantry and cavalry for refusing to lay down arms and mutinying. The time was critical. I was with the Governor General's Agent, Mr. Henry Carr Tucker, at the Mint. The runaway mutineers, many wounded and many with arms, were passing by the gate of the Mint towards the Burna Bridge. Not more than a dozen or two of the European soldiers were protecting the gate, pointing their guns towards the road. The hope of all of us was centred in them. Benares has a population of some two hundred thousand souls, but they all were utterly useless at the moment. The shops and houses were all closed, and the streets deserted. We were not so much afraid of the mutineers for our lives as of the city ruffians. The European soldiers were daily passing up the country by bullock-train, in batches to join General Havelock's army. These few soldiers were detained from the preceding day's batch. That day's batch had not arrived. With what anxiety we were expecting it I have no words to describe; every moment was precious. We would have offered each soldier's weight in silver had they been procurable. Mr. Tucker thought that they might have been waylaid by the mutineers and wished me to ride down to Rájghát to look after them. How happy I felt when I saw there the bullock-carts full of European soldiers just arriving, I have again no words to describe. This handful of Europeans saved Benares. Such incidents can be multiplied by scores and hundreds. But I do not feel myself justified in further encroaching on your Excellency's valuable time."

The Hon. Sir STEUART BAYLEY said:—"The motion before the Council is not one which, under ordinary circumstances, would require any expression of opinion from me; but, owing to the course the discussion has taken, and to the direct personal appeal that has been made to me, I feel bound to express my own views on the subject. And, first, I think it is due to our colleague, Mr. Ilbert, that it should not be supposed that he is the prime mover and originator of the Bill. Those who have read the papers of the case must be aware that the Bill had its origin in a suggestion made in March last by the Government of Bengal, when Sir A. Eden was at the head of the Local Government. That suggestion was circulated in the ordinary way for the opinion of other Local Governments; and on finding that there was a general agreement among them as to the expediency of legislation, and that in this opinion the Secretary of State concurred, the duty of framing and introducing the Bill devolved, as a matter of official routine, on my honourable friend. I make these remarks, because much of the odium with which he has been assailed seems to be based on the supposition that the Bill is in its main principle the outcome of his own reforming zeal, whereas, whatever be the merits or demerits of that principle, the responsibility should in justice be far more widely distributed.

"After the clear statement of the legal aspects of the case which we have heard from the member in charge of the Bill, I need not go over the same ground; but I may say that the aspect in which I have all along regarded the Bill is, that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in District Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions in regard to Assistant Commissioners and Magistrates of the first class I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience; and from this point of view the measure seems to me to be just and reasonable. Given the education which has enabled a Native to succeed in entering the Civil Service is not the fact of his having served with sufficient credit to be appointed to a District Magistracy or Sessions Judgeship,—a grade, be it remembered, that he cannot even temporarily reach till after an apprenticeship of some eleven or twelve years, and permanently not in less than eighteen years,—is not this as good a guarantee as can reasonably be desired of that man's fitness, honesty, and practical ability? and in that phrase I include, not merely natural ability, but the assimilation, by practice and study, of the full legal and judicial ideas which guide our Courts. I think we have here all the guarantee that can reasonably be expected that the principles of our law will be properly applied, and this is all we have a

right to demand. It seems to me that the exercise of these powers is the necessary corollary of the admission of Natives to the Civil Service. Practically, I hold that, when Government committed itself to the one step, it committed itself to the other; the question was only one of time, and the present Bill gives expression to that principle with as little alteration of existing arrangements, and with as careful a regard to the safety of the important interests concerned, as any Bill framed with this object could have attained. Before it can pass, however, the Bill will have to be criticised in ordinary course by the Local Governments (to whom only the preliminary principle of the Bill was referred in the first instance), and its working can be carefully examined and discussed, and the opinions of the Local Governments and their officers, as well as of others, will be fully weighed and considered before any action is taken. Now, there are two aspects from which the Bill is assailed. One is that Native gentlemen, no matter what their qualification, must be taught to remember that they are of a subject race, and, as such, unfit to try any members of the dominant race. On this argument I am unwilling to dwell. It has been developed into what our American cousins call 'spread-eagleism.' I have absolutely no sympathy with it, and the frequent recourse to such an argument is not creditable to our national character. But there is another aspect to the case of the opposition which I think deserves most attentive consideration; and this is the real danger in which the isolated European, living in the Mufassal, runs from having false cases trumped up against him. It is right that I should state publicly that this danger is a very real and very serious one; for, probably, no member of this Council has had the same experience as I have of the lives led by planters in the Mufassal. My own experience has given me a strong feeling on this matter, and anyone who knows the extreme bitterness with which disputes about land are fought out in the Mufassal, and the unscrupulous methods to which recourse is had in conducting these disputes before the Court,—methods to which a planter cannot have recourse,—will understand how precarious his position may become, and how essential to him it is that the law should be well and wisely administered. So far, then, as the argument against the Bill is based on a fear that these dangers are perceptibly increased, and that under the new Bill the law will be less well and less wisely administered than at present, I consider the objections deserve a most careful examination. As I have already said, my own opinion is that, in respect to Native Civilians who have reached the position of District Judge or District Magistrate, we have the best possible guarantee of their qualifications, and the other provisions of the Bill do not take effect *proprio vigore*, but merely give Local Governments the power of selection in special cases. But I imagine that what has really excited the feelings of the European population in this matter is, not so much the actual extension of power contemplated in this Bill, but the apprehension that it is only a stepping-stone to a larger measure which would really do what many speakers and writers seem to think this Bill will do, namely, place all Europeans quoad jurisdiction exactly in the same position as Natives of the country. The actual scope of this Bill has been clearly explained by Mr. Ilbert, and, so far from its being a stepping-stone to a larger measure, I can certainly say for myself, and, I believe, for the Government of India at large, not only that there is no such intention, but that the proposal itself would be regarded as dangerous and uncalled-for. No, so far as we are concerned, what Mr. Ilbert said on the score of the finality of this Bill, is, I know, strictly correct, and I hope that there may be no further misapprehension on this point.

"And now I have a few words to say in regard to the agitation which has sprung up in opposition to this measure. I confess that I failed to foresee either the extent or the depth of feeling which the measure has aroused among the European population; and it is only fair to add that I think the Viceroy had a clear right to expect from the Local Governments, or, in regard to Bengal, from myself, a more decided warning than he received of the spirit which the proposal would arouse. I cannot, looking at the evil effects which have ensued, and must ensue, from the agitation going on, but deeply regret that I failed to gauge accurately the feelings of the great body of my countrymen, and of even my many personal friends among the planting community. I confess I had hoped that twenty-five years had really done something to obliterate the feeling of race antagonism, of bitterness and hatred, which was familiar to us a quarter of a century ago. It seems that I was in error, and I deplore, as we all must deplore, the palpable evidence that I was mistaken. Nor am I prepared to say, in response to the challenge of my hon. friend Mr. Evans, that he has in any way exaggerated the depth and earnestness of the feeling which this Bill has evoked, or the probability of its continued ill effects. It is one thing, however, to oppose this measure on the ground that it threatens rights dear to Europeans, and that it jeopardises the liberty and property of the Euro-

pean community in the Mufassal. I believe the fear to be ill-founded, but at least the objections on this score deserve to be anxiously considered and to be treated with all respect. But when the ground is changed, and rhetorical appeals are made to race hatred; when bitterness and vituperation directed against the whole body of Native officials take the place of calm reasoning, then I say that those who employ these weapons incur a very serious responsibility. It is by the use of these weapons that the old sore is re-opened and embittered, and that the healing influences of the past quarter of a century are nullified and destroyed in an hour. I have expressed my own regret that I did not foresee that this would take place, and I look forward with still deeper regret to the continuance of a state of things which by action and re-action must continue to keep the sore open. I wish it were in any way possible for the Government directly, and at once, to close the question one way or the other; but it is not easy to see how this can be done without incurring still more serious evils; and I can only hope that, so long as the question must remain open, it will be discussed candidly and fairly, without threats and without vituperation, with as little appeal as possible to the passions of race hatred and race contempt, and with the moderation which persons who really have reason on their side generally find to be the most successful weapon in their armoury. To such arguments the Government will give full and fair consideration."

Lieutenant-General the Hon. T. F. Wilson said:—My Lord, with regard to the measure which is now before this Council, I occupy a position totally different from that of every other member of your Excellency's Government, inasmuch as I have alone, from the commencement of its consideration, been compelled by my convictions to take the very unusual course of opposing those with whom I have the honour to be associated. It will be within the recollection of your Excellency that I availed myself of the first opportunity I could of recording my dissent from the views of the other members of the Government. And on a later occasion, when the matter came under the discussion of the Government, I entered at some length into an explanation of the views which I entertained, and, with your Excellency's permission, my dissent from the recommendations made to the Secretary of State was duly recorded.

"It is not necessary for my immediate purpose that I should enter upon this occasion into any detailed explanation as to why I hold the opinion I do; it will suffice for the object I have in view, that I should honestly and frankly declare that the opinion which I held more than six months ago I maintain as strongly to-day. I am opposed to the measure that has been brought forward by the Government. But whilst sympathising with those who are anxious that this measure should not become law, and thus bring about the changes which the Bill will produce,—whilst sympathising with them, still I must, in the strongest manner I can, condemn the violent language which has been used towards the Government. I desire further to condemn, in the strongest terms I can command, the malicious and scandalous personal attacks which have been made upon my hon. colleagues, and more especially upon your Excellency the Viceroy, in your great and high position as the representative of the Queen in India. Sympathising as I do with the opponents of the measure, and anxious as I am that the Bill should not become law, I must say that I hold in contempt many of the measures which have been resorted to in order to increase outside agitation. My Lord, there is no member of your Excellency's Government, there is not a person who is sitting round this table, who is more anxious and desirous than I am to receive outside criticism, for I think that, in these days of enlightenment and with the spread of education, the more the Government court publicity with regard to their intentions to alter the laws of the country, the better for the Government, and the better for those it governs; and when that criticism comes to us from a largely increasing population of Englishmen residing in the Presidency-towns, and others far away in remote districts of the country in pursuit of their several avocations, distinct, separate, and independent of the Government,—I say, when such criticism and advice is presented to us through the medium of a temperate and discriminating Press,—it is indeed valuable, as making known to those who are entrusted with the government of the country, the wishes, the hopes, the fears, and all the general requirements of those who are committed to our charge; and it does something even more than this, for it, in some small degree, relieves those who are entrusted with high office of some of the heavy responsibilities which are inseparable from such position.

"The Government has been urged to-day, by several hon. members who have spoken, to withdraw this Bill. Now, I have considerable experience of the Government of India, for it has been my privilege to serve under eleven Viceroys and Governors General, and I have seen other cases, during that long period, when the Government have stood very much in the same position towards the British public of India as they stand to-day; but

never have I seen such violence and unnecessary agitation as has been imported into the discussions on this measure; and I desire to say that, anxious as I am, in what I believe to be the interests of this vast country, that the proposed measure should not become law, still I am bound to add that, in my opinion, no Government ought to yield to the violence and hysterical excitement which now rages around us. In the presence of this it seems to me that there is but one course which Government can safely adopt, and that is to ascertain further the views and opinions of many more of the officials who are spread over the country. The time which this will occupy, will permit of passion cooling down, and we shall then be able to ascertain to a greater extent than we have already done the opinions of the various classes on the question now under consideration. These measures will enable those who like to change their opinions to do so, if further information should tend to that end.

"My Lord, there is another feature in connexion with this great controversy which has given me, individually, great pain; because, if I am anything at all, I am a soldier in every feeling and idea; and those feelings have been wounded by the miserable and pernicious advice which I have seen tendered by some irresponsible persons to the volunteers in India. It is known to your Lordship, and it is known to my hon. colleagues, that, as the head of the Military Department, I take a keen interest in the volunteers in India. But, apart from the official position I hold, it would be strange, indeed, if I were not a friend of the volunteers in this country. During by far the most eventful period of my life, I was closely associated with a body of volunteers, who took a prominent part in one of the most protracted and deadly struggles which has taken place during the past century, and they materially helped to write one of the most brilliant pages in our Indian military history. For these reasons I am, indeed, pained to read of the unpatriotic course which has been recommended to the volunteers. Can any volunteer in his senses suppose that his resignation, or that of any number of his comrades, will have any influence on this Council? No. This Council will do as it has ever done. It will act fearlessly; it will ascertain all the facts of the case; it will seek further information, and it will decide as it thinks best for the interests of those who are committed to its care. But it has been said that the recommendation has been made with a view, not so much to embarrass or intimidate this Government, as to show to the House of Parliament in England the necessity of reversing hereafter any decision in favour of the measure which may be arrived at by the Indian Government. Now, if there is one thing which would rivet fast the whole thing, it would be procedure such as this. I cannot conceive anything more wild. But, my Lord, I hope that time will bring reflection, and that calmer, wiser, and more patriotic counsels will prevail. I hope that the volunteers of India, mindful of those responsibilities which they have voluntarily taken upon themselves, will remain, as heretofore, faithful citizen soldiers of the Queen Empress of India.

"In conclusion, I will only say that, as regards the measure which is now under consideration, I maintain, as I have always maintained, distinct opposition to it; and, believing it to be impolitic, I hope it will not become law. To this extent I sympathise—I repeat, I sympathise—with those who hold similar views. Beyond this I cannot go, for I desire to separate myself from the unnecessary violence and agitation that has taken place outside this Council chamber."

The Hon. Mr. GIBB said:—"My Lord, it must be remembered that we are not now discussing or defending the principle of the Bill. That will form the subject of a future debate; but as member in charge of the Home Department, and, therefore, intimately connected with the general administration of justice in the Empire, it has been considered right for me to offer some explanation regarding the introduction of this measure, specially as it has, simple though it be, raised a perfect tempest among the European community.

"In so doing, I fear I may repeat some of the arguments used by those who have preceded me, but this I cannot help, nor do I think in such an important matter it is to be regretted.

"First, I think some explanation is required to show why the Government has remained silent up till now. The rules of this Council have been, as is well known to the members, recently amended with the object of giving greater publicity to measures. When leave for this Bill to be introduced was asked for, as the new rules were not in force, it could not be published, and, in consequence, the only way the Government could inform the public of its purport was by sending it by administrative order to the public newspapers. It has not yet been published in the *Gazette*, as my hon. and learned colleague's motion to-day shows; and, until this is done, no opinions of Local Governments and Adminis-

trations can be called for on it. Now, in accordance with the usual custom, such will be called for, and, when submitted, be laid before the Select Committee on the Bill. It is only, therefore, to-day that we have had the opportunity of saying anything about the matter. The opinions already published were invited, not on the Bill, but on a proposal submitted by the Government of Bengal, and which, as usual in such cases, was forwarded to the other Local Governments and Administrations for opinion, on receipt of which, as they were nearly unanimous in favour of the Bengal proposal, concurring as they did in the opinion so clearly given by Sir Ashley Eden in submitting his proposal to the Government of India (Bengal letter 1411 T. of 30th March 1882, paragraph 4), the Bill was drafted, and leave to introduce it applied for.

"We have been accused of not consulting the present Lieutenant-Governor of Bengal. The fact is, the measure, as it came from Sir Ashley Eden, was couched in the usual terms, and was taken as the opinion of the Government of Bengal, and, as such, was, according to custom, sent to the other Local Governments and Administrations for an expression of their views.

"The measure in itself is required for the furtherance of justice and the convenience of all parties. That sooner or later such a change would have to be made has long been foreseen, and I venture to think that the time has now come when, certainly as far as Sessions Judges and Magistrates of the district are concerned, the alteration is called for to meet the actual requirements of one part of the Empire, as well as the contemplated future requirements of other parts. I will explain how this is so. At Kárwár, in the Bombay Presidency, there is now a Sessions Judge, Mr. Tagore, who was the first successful Native candidate for the Covenanted Civil Service, of which he has now for eighteen years been a member, and for some eight or more years he has exercised, with credit to himself, the duties of District Judge and Sessions Judge.

"Then, in the Bengal Presidency, there are four gentlemen of the Covenanted Civil Service rapidly approaching their promotion to be District Magistrates or Sessions Judges, one of whom, Mr. Dutt, was gazetted in Wednesday's *Gazette* as promoted to the former grade.

"I have not obtained information as to the other divisions of the Empire, but I have, I consider, shown from the above that the time has come when a change should be made to render present and impending incumbents fitted for the full duties of their appointments; and the requirement is one of increasing importance, as year by year Native members of the Covenanted Civil Service will arrive at, or come nearer and nearer to, the appointments of Sessions Judge and District Magistrate. As regards the Natives themselves, it is a measure of simple justice, in so far that the policy which was laid down by the wisdom of Parliament a quarter of a century ago admitted Natives to the Covenanted Civil Service, and by so doing not only intended, but clearly made it manifest, that they should have therein the same powers as their European *confreres*, which they will not have unless the law is amended. Surely, then, we cannot now, in the year 1883, be said to be pushing on a new measure 'with indecent haste simply to please the Natives of the country.' The entire general question is not now before us, but it has been one of long standing, from the time of Lord Macaulay to the present. In 1872 the latest step was taken. It is called 'a compromise,' not, so far as I can learn, a compromise between Natives and Europeans, but between the members of the then Government or, perhaps, of the Select Committee on the Bill; but even this showed that some change in the present direction was then felt to be required; and I remember, with reference to this, when a Judge of Her Majesty's High Court at Bombay in 1870, I minuted in favour of such a change as is now proposed, basing my opinion mainly on the inconvenience of the law as it then stood. At that time there was no Native Civilian actually in a position to require such powers, whereas now the case is the reverse. Two officers actually require them, while others will do so very shortly; and surely any un-biassed person would admit that the time has arisen for going beyond the 'compromise' of 1872.

"Let me explain more fully what I mean by the 'inconvenience' argument. Take Kárwár, for example, where Mr. Tagore is Sessions Judge, in the neighbourhood of which large railway-works are about being commenced. If a European commits a crime which requires more punishment than the District Magistrate can award, and which is three months' imprisonment and fine of Rs. 1,000, he must be committed to the Sessions Court, whose powers extend to one year's imprisonment and fine; but the Sessions Judge there could not try him, and an application would have to be made to the High Court to order his commitment elsewhere. He could thus be sent to Belgaum or Dhárwár, for example, each about 80 to 100 miles distant; this would be a troublesome journey at

any time; but, for some months of the year, one generally dangerous to the health of all parties, Europeans especially. Surely this would be a matter of great inconvenience, not to say danger, expense, and delay to all concerned.

"In the case of the District Magistracy, present arrangements also must cause great inconvenience. They are to some extent subversive of discipline by putting a junior officer by reason of his birth only, for one particular purpose, over the head of his superior in all other matters. No gentleman can arrive at the high position of Magistrate of the district under 10 to 12 years' service; and, considering that he would not even then be appointed to that post unless the Government thought him fitted for it (I have known European members of the Civil Service whom Government declined to place in such a position),—surely, I say, under these circumstances, the measure we propose is so far merely the natural and logical result of the policy which has been laid down for more than 25 years since Natives of India were first admitted into the Covenanted Civil Service of the State.

"From the extraordinary excitement which has been raised, a stranger would be led to suppose that the majority of the Europeans in India were constantly before the Criminal Courts in serious and intricate cases, whereas, so far as my own experience goes, there are very few cases in which Europeans come before them, and those of a simple nature—petty thefts or assaults.

"All cases in which one year's imprisonment does not suffice must now go to the High Court of the Province, and this Bill makes no alteration in this law. I fail, therefore, to find any reason why objection should be made, or why a 'European British subject' should not be tried by an officer who can now try any other European, be he French, German, Italian, or otherwise, not to mention those Englishmen who are not what is technically called 'European British subjects,' or an American, who might be placed before him.

"I do not now stop to consider separately the Native members of the Civil Service appointed under 33 Victoria, for, while I have some doubts whether they constitute a separate body, they are, when once admitted into the service at the end of their term of probation, for all administrative purposes, members of the Covenanted Civil Service of India, equally with those who are appointed from home. I will, therefore, now proceed to consider the three classes of first class Magistrates on whom it is proposed that Government should confer the powers of a Justice of the Peace when necessary. These are—

- "(a) Members of the Covenanted Civil Service;
- "(b) Assistant Commissioners in Non-Regulation Provinces; or
- "(c) Cantonment Magistrates.

"The proposed measure being intended to contain the entire law regarding the trial of Europeans in the Mufassal, as regards the powers to be given to the local officers, the Bill makes no difference between Europeans and Natives, just as it makes no distinction when it confers, by the previous section, Justice of the Peace powers '*ex-officio*' on all Sessions Judges and District Magistrates. It, therefore, only differs from the present law by permitting Government to confer the powers of a Justice of the Peace on Native members of the classes I have named. As this power is only permissive, we are again thrown back on the questions of convenience and fitness to exercise the powers, and these must be left to the Local Governments to decide.

"Now, I will give an instance in point:—Take Calicut or any other large seaport on the coasts of India not being a Presidency-town. Unless Government have the power of appointing a Civilian of less standing than a Magistrate of the district to hear such cases, a captain who had a complaint to make against any of his crew might have to go some 60 miles for justice, leaving his ship lying in the roadstead in charge of a junior officer and a weakened crew, although there might be a Native Civilian on the spot as able and as capable of dealing with European crews and captains as is Mr. Dossabhoy Framjee in Bombay. Surely this is a case of inconvenience demanding a remedy.

"As regards Assistant Commissioners in Non-Regulation Provinces, the special provision is merely intended to be used to prevent inconvenience to the parties, and will probably be seldom resorted to; while, as regards Cantonment Magistrates, they are, as a rule, European Military officers, and are merely included here to complete the law as to Justices of the Peace in the Mufassal.

"Having thus, I trust, shown that there are causes of an administrative character which call for the change in the law, I may, my Lord, express my inability, perhaps

from being of a somewhat unsentimental disposition, and preferring as a rule to be guided by common sense, to understand why all this commotion should have arisen about this measure—a measure which, even if the Bill became law to-morrow, and if the Local Governments were at once to confer on every Native gentleman of the classes mentioned in it the power of a Justice of the Peace—a course not at all probable,—would add but a very small number to the list of those who could try Europeans for petty offences, in the Mufassal. From a return I called for, I find the entire number in the whole of India would be about twenty, while in Bengal *alone* there would be but nine, and all these members of the Civil Service.

“ Much less can I understand why your Lordship should be looked upon as the leader of ‘an anomalous, unconstitutional and illegal confiscation of the chartered rights and privileges of Englishmen,’ or why my hon. and learned colleague, on whom the wrath of the European public seems to have fallen with redoubled violence, so much so that it was even suggested that he was not a worthy representative of the *alumni* of the two great English Universities, should be the victim of so much abuse, as if he alone, under your Lordship’s guidance, were the sole author of the proposal, and his colleagues, including myself, were no parties to the discussion which led to it.

“ Neither can I understand why the European gentry of the City of Calcutta, who have for years been subject to the Court of a Native Magistrate who can pass on them heavier sentences than, should this Bill become law, could be passed by any Sessions Judge, much less a Magistrate, in the Mufassal, should now rise to prevent their neighbours on the opposite side of the Circular Road or other parts of the Mufassal from being placed, not on a par with them, but from being saved from some of the inconveniences and trouble and expense I have above alluded to.

“ I am not sure that the great bulk of the European and Eurasian population of Bengal, who are most interested in this matter, know the meaning of the term ‘European British subject.’ It is a mere legal creation of the Indian Criminal Procedure Code; colour has nothing to do with it; a perfectly white person may not come within its definition, while a decidedly dark one may. It simply means that the person was either himself born in England, or that his father or grandfather, from whom he may be legitimately descended, was so born; but it goes no further. If the family has been settled for four generations in India, although father, grandfather and great-grandfather may have married European ladies, the representative of the fourth generation ceases to be a ‘European British subject’ within the meaning of the Procedure Code, and is amenable to all Criminal Courts presided over by Natives or Europeans, as the case may be, exactly as any one of his Native fellow-subjects, or any European of another nationality.

“ And this, my Lord, brings me to the consideration of the articles in the Press, and the letters and speeches with which the daily newspapers have teemed during the last month or so. No one respects more than I do the right of any person or class of persons to bring forward their grievances and demand redress, and, therefore, I have read carefully this varied literature, to see what reasons it contained to lead me to the conclusion that the proposed measure was uncalled-for or could only be injurious; but, my Lord, though I found in those letters and speeches and articles warm eloquence, much invective, more assertions, and some insinuations, I could find no reason to show that the view I took from the first as to the advisability of this step was wrong. I venture to think that, while all must admit the meeting of the 28th to have been an extraordinary expression of strong feeling, it was, like the articles and letters in the Press, confined to feeling only; and when a cause appears supported mainly by invective instead of calm and dignified reasoning, its importance diminishes and its significance fades.

“ But we are bound, my Lord, to respect the feelings of all the races under our Government, though we are equally bound to analyse those feelings and to judge calmly and dispassionately of them, and to bear in mind that the other races may also have feelings to be equally consulted and respected; and this we shall do most carefully when the reports and objections, which will doubtless be sent in during the next six months, come to be considered by the Governor General in Council.

“ My learned colleague has explained the legal effects of the proposed measure, and I have endeavoured to show that, while it is the logical outcome of the policy of the last quarter of a century, there are also causes of an administrative nature requiring its introduction; and there I would leave it, merely adding that, although the Magna Charta has been freely alluded to, and the right which is supposed to belong to every British subject, of being tried by his peers, made the most of, I know not how he former can

affect the matter, or where the latter right will be found granted to Europeans in India. In Calcutta it has long ceased, if it ever existed, and those very gentlemen who spoke so energetically about it have never possessed it; so that I think the issue must be, as it ought to be, confined to the simple one of whether the measure is required for the due administration of justice or not? And on this I have already shown my reasons for holding that it is an alteration of the law which the circumstances of the time have rendered justifiable."

His Excellency THE COMMANDER-IN-CHIEF said:—"My Lord, I ask permission to say a few words on this occasion, because I have been challenged to give my free and unrestrained opinion on the policy of the Government, and because unworthy attempts have been made to intimidate me from doing my duty in regard to the matter before us.

"At the outset I beg to say that, in dealing with the question of the proposed amendment of the Criminal Procedure Code, I confined myself entirely to the practical bearings of the case. The sorrows of Native officials, the symmetry of the law and philosophic theories have no special attraction for me, for I do not believe that the world can be ruled by logic alone. What I had to consider was this. Did the Government service require any change, and, if so, to what extent was change needed?

"I will say frankly that I should have been very glad if matters could have been left as they are. I have been long enough in India to have a very vivid recollection of the storm created by the so-called Black Act, and, having this before my mind, I proceeded to examine the question.

"Well, having been satisfied by the representations of the Home Department that it was necessary to remove some of the disabilities of the Native Members of the Civil Service, who must sooner or later be appointed to the charge of districts or to be Sessions Judges, I made up my mind to support the proposals of the Government so far as they were applicable to these two offices, and to these only.

"My reasons for going so far are these:—

"Though the principle involved is, no doubt, a large one and of considerable importance, yet it must be patent to anyone who cares to look into the matter that its practical application must for a considerable time be small. I looked upon the change as a very tentative measure, which in its operation could be carefully watched, and which would, in a legitimate way, give us an opportunity of testing the merits and qualifications of this class of Civil Servants.

"If, unfortunately, it should turn out that officers of this class could not be trusted with extended powers, the Government of the day would be obliged to reconsider the whole position, and perhaps retrace their steps. It is obvious that a Native Magistrate or Judge who exercised his functions in a tyrannical or unjust manner would not hold his office very long. Again, the proposed change seemed to me to be in the nature of what is called a permissive Bill. The Supreme Government gives power to certain classes of its officers, but it cannot appoint these officers. It is only Local Governments that have the power of appointment, and we may rely on their not appointing to such offices any but men of the highest character and qualification; for the stronger sympathies of the Governors will naturally lie on the side of their own countrymen.

"In point of fact, I looked on the amendment of the law as a very safe experiment, and an experiment that might well be tried when its provisions would only apply to one or two individuals. I knew there would be opposition to any change, but I believed that, when my countrymen understood the case in all its bearings, they would see that it was a safe way of introducing a change which the bitterest of its opponents admit to be a question of time.

"That my expectations and forecast have been utterly wrong I freely admit, but I am not prepared to admit that the objections which have been put forward by those who oppose our proceedings are founded either on reason or common sense.

"I have hitherto attempted to restrict my observation to my own personal connexion with the measure under discussion, but there is one other point on which I have something to say. Very wicked and criminal attempts have, as you know, been made in some of the newspapers to excite animosity against the Government in the army. My Lord, I cannot trust myself to speak on proceedings of this nature. I am aware that the army may, and perhaps does, take a keen interest in a question that is engrossing the thoughts of the public; but I feel confident that the army knows its duty, and that it is thoroughly loyal to its Sovereign and to its salt.

"Soldiers have their feelings like other people—feelings that we all respect; but they also know that, if they have a grievance to redress, there is a legitimate way of putting

it forward through their officers and those placed in authority over them. But what are we to say of persons who make use of such tactics in support of their arguments? They must, indeed, be in a bad way when they resort to such a course.

"It is possible that the reference to Cantonment Magistrates in the Bill may have misled people into the belief that the Government proposes to appoint Native Civilians to such offices. This would be an entire misapprehension.

"The following extract from a note which I received two days ago from the Secretary in the Legislative Department explains more clearly than I can why reference has been made to this class of officials in the Bill.

'With regard to Cantonment Magistrates, they were put in because they would not ordinarily be Covenanted Civilians, Native Civilians or Assistant Commissioners, and it was thought necessary that power should be given to appoint a Cantonment Magistrate, who would be almost certain to have to deal with European British subjects, a Justice of the Peace. Military officers who are Cantonment Magistrates can, under the present law (Act X. of 1882, section 22), be appointed Justices of the Peace if they are, as I suppose they always are, European British subjects.'

"It will, then, be seen that the Government does not intend to make any real change in the system under which Cantonment Magistrates are usually military officers.

"If the reference to Cantonment Magistrates had not been made in the amendment, the effect would have been that any person, even a person who was not an European British subject, might have been made a Cantonment Magistrate, and it was to avoid this difficulty that the point was raised in this form."

His Honour the LIUTENANT-GOVERNOR said:—"My Lord, I must apologise to the Council for being obliged to trouble them with a few remarks at this late hour, but the desire which I share with the other members of Council to hear the address of your Excellency compels me to be very brief. I feel, however, that I could scarcely remain silent, even if I wished to do so, after the several appeals which have been made in the course of the debate to the Government of Bengal, and after recent events which have testified in so prominent a manner the strong expression of public opinion in this City and the Province. At the same time, I confess, I feel I am in a position not altogether satisfactory regarding this proposed legislation; and if I had not received so late as yesterday evening from your Excellency an assurance that the motion now before the Council was of a purely formal character which pledged no one to the principle of the Bill, but, what is of more importance to me, that it is the intention of the Government of India to refer the Bill as drafted for the renewed consideration of Local Governments, I would not have hesitated to take this opportunity to state at length, and with such ability as I possess, the conviction which I entertain that this measure is unnecessary in the present condition and constitution of the Native Judicial Covenanted Service in Bengal, and that it is inopportune, having regard to the many claims which demand the most cordial relations between the Government and the European community in India. In saying that, I am not in an altogether satisfactory position, I allude to the fact to which reference has been made, that I have had no opportunity personally of consulting the officers of Government or recording my own views upon this change in the law; though at the same time I am aware that the Government of India had received from Sir Ashley Eden a communication which favoured the view of withdrawing restrictions which now exist against Native Judges and Magistrates in the matter of the trial of European British subjects. Any defects or omissions in that respect will now be removed or remedied; and, as I shall have the opportunity of referring to the experienced officers of Government for their opinion, I think it the wiser and more appropriate course, and a course in which I am justified by the temper and excitement around us, if I reserve my own judgment till I have received those opinions. Whatever value may attach to my own views of the question—and those views I will say have not been formed or expressed only recently—they may be modified, or they may be removed, or they may be strengthened by the result of the inquiry. But whatever the result may be, they shall be communicated to your Excellency's Government with the utmost unreserve. Ample and exhaustive as was the speech of my hon. and learned friend Mr. Evans, with a great deal of which I sympathise, there are a great many facts which I could bring forward to support his contention that there is no administrative difficulty in connexion with the matter, and I should have been inclined to challenge more strongly than he did the competency of the Native to try European British subjects. But this is not the occasion on which I shall press those views. It is right, however, that, before I conclude my remarks, I should say a few words as regards the attitude of resentment which has characterised the public meetings and public utterances in connexion with this

Bill. No man could deprecate more strongly and earnestly than myself the wild, extravagant, and very dangerous sentiments to which the excitement round about us has given occasion. And I am sure no Englishman, Scotchman, or even Irishman, in his lucid moments, will think that the cause he advocates will be advanced or promoted by the threats levelled at the Government by certain writers and comments in the Press. If the Bill is not to be withdrawn—and this suggestion has come from a good many quarters—I sincerely trust the suspension of the measure for some months will induce a calmer judgment. No Government can deal with legislation, or with the withdrawal of legislation, in the presence of a popular phrenzy. Still I shall be wanting in my duty if I failed to press on the Government that I hope that, in their absence from personal contact with the public feeling, they will not allow themselves to think that the calm which I hope will supervene is an indication of apathy or indifference. If it be the opinion of the Government of India that this is a case of temporary excitement, which will soon die out, I am sure they are mistaken; for I feel that, in the whole of my experience in India, this is unmistakeably the strongest and most united and unanimous expression of opinion of public discontent that I have ever known, and that the last state will be worse than the first. I could wish for myself that the Bill could be withdrawn, and I do so, not only for myself, but as expressing the opinion of a great many who have spoken to me on the subject, even though they support the principle of the Bill. I believe that such difficulties happen to all Governments, and that the oldest and most English course is the wisest and safest. It is in the knowledge of all of us that such a course has been adopted in many cases, in our home Parliamentary experience, and it has not unseldom been the case also in India; and, if I may venture to allude to the fact, I think your Lordship's reputation in this country as a Viceroy, who has endeavoured earnestly and honestly to promote the political and educational development of the people, will not be affected if you see your way to withdraw the Bill."

His Excellency THE PRESIDENT said:—"I am very sorry that I should feel it my duty to detain the members of this Council yet a while after the lengthened and able discussion to which we have listened for so many hours; but I feel bound to make some statement, before this discussion closes, of the grounds upon which the Government have proceeded in introducing this Bill, and to explain the reasons which led them to think that it was a right and a reasonable measure. The observations which I wish to make now will be, as far as possible, of a strictly practical character. I do not intend or desire to enter into needless controversy, for I wish to reserve to myself the freedom carefully to weigh and consider the arguments which have been adduced in the course of this debate on both sides of the question at issue. It has been to me a source of regret that I have not had an opportunity before to-day of explaining the course which the Government has pursued; but that I have not had an earlier opportunity of doing so has not been my fault. It was the intention of the Government to have taken a discussion upon this Bill upon the 23rd of February. We never had the least intention of hurrying this measure through the Council, or of proceeding with it further than the stage which I described when it was brought in as the second reading stage during the present Calcutta season; but we did propose, and it was necessary that we should propose, as the rules stood when this Bill was brought in, that it should have been referred to a Select Committee before we left here, with a view to its being afterwards circulated and published as the rules required. But when my honourable friends Mr. Evans and Mr. Miller became acquainted with the intention of the Government to take a further stage of this Bill on the 23rd of February, they represented that they were somewhat taken by surprise by that proposal. Not that I understood them to make any complaint of want of good faith on the part of the Government; but they urged that they did not expect any such discussion to come on on that date. In consequence of those representations, I had an interview with my hon. and learned friend Mr. Evans, on the 19th of February, and I then said to him that I was anxious that this discussion should take place, because I felt that it was only fair to the Government that they should have an early opportunity of explaining at greater length than had been explained by my hon. and learned friend Mr. Ilbert, when he brought in this Bill, the objects of this measure, and the reasons which had induced them to submit it to this Council. I said to my hon. and learned friend, Mr. Evans—'You may perhaps object to a discussion in the nature of a second reading, but it is possible for us, under the present rules, to take a formal discussion upon a reference of this Bill to Local Governments; that would afford a sufficient opportunity for the statement that I propose to make, and would not involve a discussion upon the principle of the Bill.' My hon. and learned friend took time to consider whether he

could agree to that proposal or whether he must adhere to the objection previously urged on his own behalf and on that of Mr. Miller to the discussion on the date proposed, and on the next day he informed me that he could not waive that objection. I then had to choose between putting my hon. and learned friend and Mr. Miller at some disadvantage, and putting myself and the Government at some disadvantage. I chose the latter alternative. It has been one of the many accusations made against the Government, that they delayed a farther explanation on this subject: those who have used that argument will now have an opportunity of judging of the justice of their charge. I may as well also say, as my hon. and learned friend is here, and will bear me out, that, when I saw him on the 19th of February, I explained to him that the Government had no intention of passing the Bill during the present session; to that my hon. and learned friend assented. I was, therefore, somewhat surprised when I saw next day a statement in *Reuter's telegram*, that something had been said in the House of Commons, which appeared to imply that this measure was going to be pressed forward now; and I immediately explained to the Secretary of State that that statement was not correct. It was founded on an entire misapprehension of the intentions of the Government. It would have been totally inconsistent with the declared policy of the present Government of India, if they had thought of unduly pressing forward this measure, and of not affording the fullest opportunity to the public and those interested in the matter to consider it. My hon. friend Mr. Miller touched upon that point, and he seemed, I thought, somewhat to complain that the public had not been consulted in this case in the manner in which we professed to consult them in respect to our legislative measures. Now, that charge—if it was meant as a charge—is founded on a mistake. The Government never professed that they would submit their Bills to the public before being brought in. No Government ever did or could do such a thing. All that we said was that, when our measures were brought in and published, the public should have the fullest opportunity of considering them; and that we ourselves desired to consider any representations which might be made to us upon any proposals for legislation which we might so submit. To that course we have strictly adhered in this case, and have acted in perfect and absolute accordance with all our professions in respect to giving the public full time to consider our legislative proposals.

“I thought it necessary to make these observations, in order to clear away some misapprehensions and misrepresentations which have surrounded this matter for some time.

“And now I will proceed to state very briefly the history of this transaction. Something was said upon the occasion of the introduction of this Bill by Sir Jotindra Mohan Tagore about an undertaking which had been given him last year to the effect that this subject would be considered by the Government of India. What took place on that occasion was this. When the Criminal Procedure Code was before the Council last year, one of my hon. colleagues,—I cannot exactly remember which,—who was a member of the Select Committee on that Bill, came to me and said that Mahārāja Jotindra Mohan Tagore had told the Select Committee that he intended to raise the question of the powers of Native Magistrates to exercise jurisdiction over European British subjects. That was at a time when the Bill had nearly reached its last stage, and my hon. colleague said, with perfect justice, that it would be entirely impossible to take up a question of such magnitude upon that stage of the Bill; and he said to me—‘I think, if you were to speak to the Mahārāja and tell him that, if he did not bring this matter forward now, the question would be considered by the Government, he probably would not press his notice of amendment.’ I replied ‘I will consult my colleagues’; and I did consult the members of the Executive Government at that time, and it was with their full consent that I told Mahārāja Jotindra Mohan Tagore that the subject in which he was interested should receive the full consideration of the Government. Of course, by so saying, I gave no pledge whatever to the Mahārāja as to what would be the decision at which the Government would ultimately arrive. All that I did say was—and that promise I and my colleagues intended to keep—that we would consider this question after the new Criminal Procedure Code had passed. But, before we had taken any steps whatever to fulfil that pledge, we received from Sir Ashley Eden a letter which is contained in these papers, and that letter winds up as the summary of the opinion of Sir Ashley Eden with these words:—

‘For these reasons Sir Ashley Eden is of opinion that the time has now arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXIII. of the New Code of Criminal Procedure, or when at least Native Covenanted Civilians who have attained the position of District Magistrate or Sessions Judge

should have entrusted to them full powers over all classes, whether European or Native, within their jurisdictions.

“That opinion was expressed to us by the Lieutenant-Governor of Bengal; it was a clear and distinct opinion. There is not one word in Mr. Cockerell’s letter from which I have quoted which indicated any probability that a proposal of that kind would be received, I will not say with resentment, but even with disapproval by any portion of the community. Now, it is not necessary that I should recall to the recollection of this Council who was the person who made that recommendation. You all know that Sir Ashley Eden had been for five years Lieutenant-Governor of Bengal; you all know that he was a man of large experience, and that he was intimately acquainted with the feelings of the European population; and certainly there was ample proof that he had their respect and confidence in the remarkable ovations which he received just before he left the country. Sir Ashley Eden did not accompany that letter by any other communications upon the subject, and, therefore, I had no doubt whatever that it contained his deliberate opinion and advice to the Government of India. My hon. and learned friend Mr. Evans says that Sir Ashley Eden only wanted to put his opinion on record; and he did not at all mean that anything should be done about it now. He only desired to say what he should like to see done at some future opportunity. But, in the first place, he says distinctly, in the summing-up of his letter,—‘the time has now arrived for the change,’ and, in the next place, it must be borne in mind that, if Sir Ashley Eden did not mean that the question should be taken up at an early date upon his proposal, he had a perfect opportunity of saying so; because, by a singular coincidence, marking the high respect entertained for that distinguished man by Her Majesty’s Government, he went straight from the Government of Bengal to the Council of the Secretary of State at home; he was a member of that Council when our proposals were submitted to and sanctioned by the Secretary of State; and, therefore, if we had misinterpreted his views as my hon. and learned friend appears to think, or, if we had acted hastily on his opinion, he would undoubtedly have said so; and I cannot for a moment think that my noble friend Lord Hartington would not have communicated the fact to me: he did not do so. I should like to say one other word about Sir Ashley Eden. In the earlier stages of this controversy, before a large number of persons took to using strong language they used language of a milder kind, and they talked about this Bill as an ideal and sentimental measure. Now, I must say that, if ever I came across a man in my life who was not remarkable for the sentimental side to his character, that man was Sir Ashley Eden. I do not think that I ever knew a man less likely to be led away by vague sentiment or mere theory than Sir Ashley Eden. Then, what did Government do? If they had been so very keen to carry out this proposal; if they had been so very ready to proceed rashly in this matter, they would have had a very fair ground for acting at once, in the mere fact that a man so experienced as Sir Ashley Eden had recommended them to take that action. But they did nothing of the kind; they consulted the Local Governments on the subject, and the opinions of those Local Governments are before this Council. I have heard it said that those Local Governments felt themselves bound to give opinions which they thought would be agreeable to the Government of India. Well, really, it is needless on behalf of the Local Governments that we consulted—of men so eminent as those who fill the office of heads of those Governments—for me to reply to a charge of that description. The question was very carefully considered by those Governments, and their opinions are, with the single exception of the Local Government of Coorg, in favour of amending the present law. It is quite true that the Government of Madras were divided among themselves, and that the opinion given in favour of the Bill was only decided by the casting vote of the Governor of that Presidency. It is also true that another gentleman, Mr. Howell, has given an opinion which, if not absolutely clear, must on the whole be regarded as unfavourable to this proposal, but he reported as Commissioner of the Birárs to the Resident at Haidarábád, who advocated the principle of this Bill; and, therefore, I am strictly correct in saying that all Local Governments, with the exception of Coorg, were in favour of an alteration of the law. My hon. and learned friend, Mr. Evans, said that the only Local Government that is really concerned with this question at all is the Government of Bengal. But it was the Government of Bengal which started the question. I do not observe, however, that the European community in other parts of India appear inclined to admit that they have nothing to do with this subject; and I venture to think that all Local Governments have an interest in this matter, and are entitled to speak upon it. Can it be supposed that those distinguished men—many of them personal friends of my own—who are at the head of

Local Governments; if they had anticipated—I will not say danger, but—serious inconvenience, would not have advised me privately that this was a measure that ought not to be pressed forward? There are, doubtless, in these papers differences of opinion between different Local Governments, as to the extent to which this measure should go, just as there have been differences among members of the Executive Council on the same subject. My hon. and gallant friend the Commander-in-Chief says that, though he supports the measure, he would confine it to District Magistrates and Sessions Judges. Sir Charles Aitchison, on the other hand, went further than any other head of a Local Government; and the measure as produced and brought forward by the Government of India is one which has struck a mean between these different proposals and which, on the one hand, does not go so far as Sir Charles Aitchison recommended, and, on the other, goes somewhat further than the recommendations of some other Local Governments. Indeed, as a matter of fact, the measure was drawn up mainly in accordance with the amendments of the Code suggested in Sir Alfred Lyall's letter. Now, what was the next step taken with regard to this question? The next step taken was that the Government of India sent a despatch to the Secretary of State, Lord Hartington, last September, containing their proposals and forwarding the papers now before the Council. Lord Hartington must have received that letter late in September. It was upon the 7th of December that, in an answer to that letter, he stated that he had very carefully considered our proposals in Council, and that he gave them his sanction. My hon. and learned friend Mr. Evans alluded to the fact that this circular to Local Governments was not sent to the Government of Bengal. The course taken on the occasion was in accordance with the practice generally pursued; and it is a perfectly reasonable and intelligible practice, followed by all the departments of the Government of India, that, when one Local Government originates a proposal on which the Government desires to consult other Local Governments, the original proposal is sent round to those Governments, but not sent back to the Government from which it, in the first instance, emanated. The Bill was prepared and drafted in strict accordance with the proposals sanctioned by the Secretary of State. Leave was given to introduce it on the 2nd of February. It was brought in on the 9th of February; and the papers, containing the opinions of Local Governments, were circulated to members of Council and given to the public at the earliest possible opportunity. I believe I am right in saying that they were circulated to members of Council on the 12th February.

“That is the history of this transaction up to the introduction of the Bill. And I turn now to consider what was the state of things in respect to the position of Natives of India in the Civil Service of the Crown, with which we had to deal. I am dealing now solely with the case of the Covenanted Civil Servants. I leave aside the question of the non-regulation Provinces, which is not material to the present argument. I say nothing of Cantonment Magistrates, because my hon. and gallant friend the Commander-in-Chief has explained the Cantonment Magistrates are almost invariably military officers, and that no Native gentlemen are likely to be appointed to positions of that kind. The question, therefore, we have to consider here relates to the Native members of the Covenanted Civil Service, because it must be borne in mind that, although in departmental practice, it has been the custom to describe the members of the Covenanted Civil Service admitted under Lord Lytton's rules as members serving under the statutory rules, they are under those rules themselves—rules approved by the Secretary of State, Lord Cranbrook, and laid before Parliament—admitted to employment in Her Majesty's Covenanted Civil Service. These are the words of the rule as sanctioned by the Secretary of State and by Parliament; and, therefore, the persons with whom we have to deal are the members of the Covenanted Civil Service. Our proposal, I would just point out, is a very much narrower one than that which was made in the year 1857, and to which Mr. Evans alluded. In that year there were no Native members of the Covenanted Civil Service. The proposal of 1857 would have subjected European British subjects to the jurisdiction of all the Mufassal Courts of every grade. The present Bill does not go nearly so far. Well, what is the state of things with which we have to deal now? I have said that in 1857 there were no Native members of the Civil Service at all. They have come in since;—first, by competition, having gone home and competed on equal terms with Englishmen, Irishmen, and Scotchmen, and won their way in that competition into the Civil Service; and recently under the new system inaugurated in the time of Lord Lytton. The time has now arrived when some of these gentlemen have risen to high judicial positions. Mr. Tagore is one, and I have been informed that Mr. Dutt has also been raised to a similar office. Therefore, they are now

beginning to reach those positions, and the number of those who fill such appointments must gradually and steadily increase. Mr. Miller asks in what have the times changed since 1872? They have changed in this respect, that some of these Native gentlemen have acquired these important positions, and others will go on rising to them in increasing numbers in coming years. But the great change which has taken place in regard to this question from an administrative point of view has been that which was made by Lord Lytton's Government in 1879. That change was made by the express order of the Government at home: indeed, after the reiterated orders of successive Secretaries of State. I am not about to express any opinion as to the mode in which these gentlemen are now admitted into the Covenanted Civil Service under the rules of 1879. It may be that these rules can be improved. Nothing is more probable than that experience may show that they are capable of amendment. But what we have to consider is, what is the position in which these rules place the gentlemen admitted under them? and what will be the effect of them as time goes on? These gentlemen will rise in the Covenanted Service year by year, and they will be entitled to hold higher and higher offices as they advance, until ultimately they will attain to the highest judicial offices below the High Court. Now, it has been contended that the Local Governments, when they spoke of Covenanted Civilian, only meant those who had got in by competition. I have no reason to suppose that that is the case with any of the opinions which have been expressed, because the words 'Covenanted Civil Service' cover all the members of that Service. The Hon. Mr. Evans quoted Mr. Elliott, the Chief Commissioner of Assam, and he said that Mr. Elliott only proposed that these powers should be conferred upon persons who had got into the Covenanted Service by competition. Mr. Elliott no doubt drew a distinction between the two classes; but he said that he would extend the powers to the second class when they became District Magistrates or Sessions Judges. Now, it seems clear to me that, as these gentlemen in the Civil Service rise to the higher appointments, especially to the appointments of District Magistrates and Sessions Judges, increasing administrative inconvenience must ensue unless these additional powers are conferred on them. If they are to hold these offices, it appears to me that inconvenience of a serious kind must arise as time goes on; indeed, I shall have to show that it has arisen already. The Hon. Mr. Evans has said that what we ought to do is to give the best justice we can to everyone in the country without giving rise to administrative inconvenience. I entirely concur in that opinion, and I say administrative inconvenience has already begun to be felt, and it will increase. That being the state of things with which we had to deal, some of these gentlemen being already in high administrative positions, and a still larger number coming on from below, we felt it our duty to see in what way we could best remove this administrative inconvenience, and, I must also say, the injustice to suitors which would be caused by dragging them long distances over the country.

"I turn to consider what is the scope of the Bill. I have shown you that the extent of our Bill is very much less than that of the Bill of 1857. It is very much less than that of the Bill brought in by Lord Dalhousie's Government in 1849. We have confined it to the strict necessities of the case, and the result of it would be that, if it were passed to-day, it would at once confer jurisdiction over European British subjects upon only two persons in India; and the number who would rise to that position during the next few years might not exceed four or five. That statement supplies, as it seems to me, the strongest argument against the proposal of the Government. It is said, why do this now when it will only affect Mr. Tagore and Mr. Dutt? Why do this now, when, if there is administrative inconvenience, it is only in one or two places? and I admit that I am bound to meet that objection, and to explain why the Government think that this is a convenient opportunity for making the change.

"But, before I do so, I must point out that, of course, that argument cuts both ways. If the scope of the Bill is so very small, then it seems not altogether reasonable that it should have been encountered by such violent opposition. In stating the reasons why it appears to me to be desirable to make this change now, rather than to postpone it until the appointment of a much larger number of these gentlemen to high judicial positions, I desire to deal with this question strictly from a practical point of view. I am not going upon this occasion to enter into any examination whatever of any claims which these Native gentlemen may have to exercise this jurisdiction; but, at the same time, I cannot but ask members of this Council to consider whether—I do not speak now of justice or generosity—it is politic, if there be not an overwhelming necessity, for us to impose on these gentlemen restrictions which sensitive men would naturally feel? These men, it must be admitted, are the pick and cream of our Native Civil

Service; those who are now in this position, or are about to enter into it, have won their way through a keen competition at home, and secured their position through their own ability. Under Lord Lytton's system, by which, for the future, at least one-sixth of the whole Covenanted Service will in course of time consist of Natives, we shall have to rely more and more, year by year, on the devotion and loyalty of these gentlemen. I think the question of policy is not undeserving of the consideration of this Council; but I pass from it to the practical question. My hon. friend Mr. Gibbs has shown you to-night that the idea that administrative inconvenience may arise is not an imagination or a theory; he has pointed out to you what are the circumstances in regard to Mr. Tagore, the Sessions Judge of Kárwár; and he has explained that, if certain railway works which, he says, are likely to commence there are opened, they will bring European British subjects in considerable numbers into that district. If these persons are not tried by the Sessions Judge, they will either have to be sent by sea to Bombay, or have to march 80 or a 100 miles through a district which at many times of the year is very injurious to health. This constitutes a real administrative inconvenience, and it implies, not only an inconvenience to the administration of justice, but also a considerable hardship to the suitors and witnesses concerned. And it is surely clear that, though there is not at the present moment an irresistible necessity for introducing this measure, as Lord Lytton's system develops an irresistible necessity will arise. When you have one-sixth of the Civil Service composed of Natives, it will be impossible to maintain the present restriction. Therefore, what we had to consider was—is it better to wait until this necessity becomes overwhelming and irresistible, or is it better to introduce the system now? I confess it appears to me that it is far wiser, and far more in the true and substantial interests of those over whom this jurisdiction is exercised, that it should be introduced now, when the persons who would obtain the powers are very limited in number; when the circumstances under which they enter the Civil Service insure their ability and character; and when all their proceedings can be carefully watched. Being few in number, it will be easier now than afterwards for the attention of the Local Governments and the public to be directed to their proceedings; and, being the men they are, it seems to me that they would be likely to set a good example and give a good tone to those who come after them. I hold it therefore, to be wiser to introduce the measure now gradually, cautiously, and tentatively, than to wait till the change is forced upon us by necessity, and the powers which are now to be given only to a few men have to be given suddenly to a very much larger number of Native Civil Servants. This is the ground upon which I thought that the time had come when this change could best be made. The truth is, that the opposition to this Bill is in reality, not so much an opposition to this particular measure, as an opposition to the declared policy of Parliament about the admission of Natives to the Covenanted Civil Service. That policy has been a deliberate policy; it commenced many years ago, and has been enforced steadily from time to time. It is not a policy of my invention or of the invention of the present Government at home or here; it is the policy of Parliament. What does Lord Cranbrook say upon that subject, writing to Lord Lytton's Government on the 7th of November 1878? He says—

‘The broad policy was laid down by Parliament so long ago as 1833, that no Native shall, by reason of his religion, place of birth or colour, be disabled from holding any office; and Her Majesty's gracious proclamation in 1858 announced her will that, as far as may be ‘our subjects of whatever race or creed be impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.’

“And he goes on to say—

‘Since that period several of my predecessors in office, and especially Lord Halifax, Sir Stafford Northcote, the Duke of Argyll, and Lord Salisbury, have pressed upon the attention of the Government of India that the policy of Parliament, enforced as it was by the Royal proclamation, was not to remain a dead-letter, and two Acts of Parliament were passed to give further effect to it. But, as your Excellency justly observes, all endeavours hitherto to deal with this question on a satisfactory basis have proved unsuccessful. It is gratifying to observe that your Lordship's elaborate treatment of the subject will enable a practical course to be taken, that will prove, it may be hoped, both beneficial to the State and satisfactory to the natural aspirations of the educated Natives of India.’

“That is said, not by me, but by Lord Cranbrook; and I cannot doubt that, if that policy is now applied under the rules laid down by Lord Lytton's Government in 1879, and is carried out as he proposed, an alteration of the law in the direction in which this Bill

goes is inevitable at no distant time. The Government of India have not the power, if they had the inclination, which certainly I have not, to withdraw from that policy; and Lord Cranbrook very distinctly tells us that, in his judgment, Parliament will not withdraw from it. Lord Lytton's original proposal was that, when he established a separate Native Service, permission to Natives to compete for the Civil Service in England should be withdrawn. What Lord Cranbrook says on that subject is this—

‘But your proposal of a close Native Service, with a limited class of high appointments attached to it, and your suggestions that the Covenanted Civil Service should no longer be open to Natives, involve an application to Parliament which would have no prospect of success, and which I certainly would not undertake. Your Lordship has yourself observed that no scheme could have a chance of sanction which included legislation for the purpose of repealing the clause in the Act of 1833 above quoted; and the obstacles which would be presented against any attempt to exclude Natives from public competition for the Civil Service would be little less formidable.’

“Therefore it appears to me to be evident that the intention of Parliament has been to admit Natives more and more largely into the Covenanted Service; that steps were taken in 1879, after a considerable delay and frequent injunctions from the Secretary of State, to carry out that intention more fully; and that the result has been, as I have stated, that we have now to deal with a state of things in which, before many years have elapsed, it will be, as I have said, simply impossible, on account of administrative inconvenience, to withhold powers of this description from the higher ranks of the Covenanted Native Service. The Hon. Mr. Evans has said that he could not admit the force of the argument that because Presidency Magistrates had power to try Europeans, therefore, similar powers should be given to Native Magistrates in the Mufassal. I admit a considerable portion of the argument of my hon. friend, but he must allow me to say that the fact that Natives of India have been trying Europeans for a considerable number of years in Calcutta and Bombay is a conclusive argument against the theory that Englishmen have a constitutional right to be tried by Englishmen only. No one is more convinced than I am of the advantage of having a case argued before a Magistrate by trained lawyers; and I would not for a moment think of underrating its importance. Nevertheless, I was rather struck with what I saw in a Bombay newspaper this morning. It certainly did seem rather curious, after all that has been said on this subject, to find that certain European gentlemen, composing what is called the Salvation Army, are being tried at this moment in Bombay by Mr. Dossabhoj Framjee. Their religious feelings are very intimately involved in the case which is being tried by that Native Magistrate. I did not intend to have said anything about the past history of this question, because, as I have mentioned before, my main object has been to explain the reasons which have induced the Government to bring in this Bill. But Mr. Evans has spoken with personal knowledge of what was called the compromise of 1872. On that point I would say this. There may have been a compromise between the members of the European community and the members of the Select Committee. Of that I know nothing, although I have not the least doubt that the Hon. Mr. Evans has stated exactly what occurred; but it is perfectly obvious that that compromise cannot have been a compromise with the Government; because, if it had been, then Lord Napier of Merchistoun, Lord Napier of Magdala, Sir Richard Temple, Sir George Campbell, and Mr. Barrow Ellis could never for a moment have given their support to an amendment inconsistent with it. My hon. friend Mr. Ilbert, in the speech with which he commenced this discussion, pointed out that all the safeguards now possessed by Europeans, and all the special privileges now enjoyed by them, were left standing by this Bill, except the single one of being exempted from the jurisdiction of Magistrates who are not European British subjects. This Bill does not touch the rest of these safeguards; and the Government has not the least intention of submitting any proposals now or hereafter, certainly not as long as I am here, with the view of interfering with those privileges. But there is another matter which I look upon as in some respects a more important safeguard, and that is the power of supervision exercised by the High Court over all the Courts below. What would be the result if a Native Magistrate trying an European acted towards him in an unjust manner? If the case came before the High Court, or if they even heard of it, they would be able to call for the proceedings, and the consequence would be to deprive that gentleman of the position which he might have so abused. That is the history of this measure, and of the grounds upon which it was introduced, and of the extent to which it goes. I know very well that a great deal has been said, as is always said when changes are introduced, about this being the thin end of the wedge. I can only say that, so far as this question is con-

cerned, it is not the thin end of the wedge, and that this measure represents the final views of the present Government in respect to changes regarding this portion of the Criminal Procedure Code. Passing from the history of the course we have taken and the motives which have actuated us, I may now state that we are perfectly ready to listen to reasonable remonstrances, to statements of fact and to legitimate arguments. But neither this nor any other Government that will ever exist in India will, I hope, listen to violence, to exaggeration, to misrepresentation, and, least of all, to menace. It is perfectly natural that those whose interests are affected by this Bill, that those who would lose under it a privilege to which they evidently attach a great value, should bring their views on the subject before the Government, and should press them earnestly upon their attention. I should be the last man to complain of that being done, and I should be the last man not to give to such representations the fullest and most careful consideration; and those who are animated by the dread, which has been expressed in many quarters, of the results of this measure, may rely upon it that a fair representation of their opinions, supported by good arguments, will be listened to, with the greatest attention. It is, of course, true that in this, as in every other, question with which the Government of India has to deal, it is obliged to take a wider view than that confined exclusively to the interest of any single class of the community; but it is also true that any special class of the community, which is specially affected by any particular measure, has a right to bring its views before the Government, and to expect that those views will be fully and carefully examined. I will not allude on this occasion to the character of a great deal of the opposition which has sprung up to this Bill, or to the means by which that opposition has been to a great extent conducted; I will say nothing of the charges which have been made against myself, or of the systematic misrepresentation of my feelings and objects in regard to this and other measures. I pass that by; but I can truly say that it is a source of deep regret to me and all my colleagues to observe the difference which has in this matter sprung up between the Government and, I admit, a very large portion of the European community, especially on this side of India. I do not know whether anything that I can say will tend to mitigate the bitterness of the controversy or to induce calmness; but if the vehemence of feeling is due in any degree to a misapprehension as to the scope of the Bill or the course which the Government intended to pursue in regard to it, or to a fear that we have ulterior designs which we never have entertained, then it is possible that this discussion may have done good. It is only right that it should be remembered that the Government never had the smallest idea of hurrying this Bill through the Council. They proposed to deal with it deliberately, and to afford the amplest opportunity for the representation of opinion in regard to it. It will be observed that it was before any such representations had reached the Government, and, therefore, before it had been in their power to consider them, that the proceedings which have been adverted to were adopted. This Bill will now, in accordance with the usual practice, be sent to the various Local Governments, and they will have an opportunity of recording their views upon it. These views will be sent up in due course, after careful examination by the Local Governments into all the circumstances of the case, for the consideration of the Government of India; and we shall then give to the observations of the Local Governments and of the public which may have reached us in the meantime, the fullest weight and the most deliberate consideration. I frankly say that with those who desire, if any such there be, to retain the distinction which this Bill proposes to remove, merely because it is a race distinction, I have no sympathy whatever. To arguments which are inconsistent with the declared policy of the Crown and of Parliament it would be contrary to my duty to listen; but to fair reasons, urged in a manner to which the Government can give heed, the ears of myself and my colleagues will always be open on this and every other question. I observe that the opponents of this Bill speak of appealing to the House of Commons. I am the last man in the world to object to such a course being taken. To the decision of the House of Commons both parties to this controversy must bow. I do not think I have anything more to add now by way of explanation of the views of the Government. I have kept myself clear of controversy, because I wish to hold myself perfectly open to consider the arguments adduced on both sides in this debate. If I had thrown myself into this controversy, it might fairly be objected that I had not reserved to myself real freedom to consider those arguments. I have shown that this measure was recommended to the Government by Sir Ashley Eden, the Lieutenant-Governor of Bengal; that its principle has been approved by all the other Local Governments in India, with the exception of that of Coorg; and that it

has been very carefully considered by the late Secretary of State for India, Lord Hartington, in Council and sanctioned by him. I have recalled to the recollection of the Council the circumstances in which we stand at this moment, and those in which we shall stand in no distant future, with respect to the position of the Native members of the Covenanted Civil Service. I have pointed out how very limited the immediate effect of the Bill will be, and have stated the reasons which induce me to think that it is wiser to make the proposed change now, when it can be brought into operation gradually and cautiously, than to wait until administrative necessities and justice to suitors compel the Government to introduce it suddenly and extensively. Lastly, I have expressed the perfect readiness of the Government to consider and to weigh any remonstrances which may be made against this Bill, provided they are supported by arguments which are consistent with the policy of Parliament. The Government do not propose to take any further steps in this matter now, and ample time will thus be afforded for the deliberate examination by Local Governments, by the Government of India and by the Government at home of any representations which may be made to them in connexion with this measure."

The Motion was put and agreed to.

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EAST INDIA (JURISDICTION OF NATIVES OVER EUROPEAN
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1882,

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COMPRISING

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1883.

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No. 1.

LETTER from SECRETARY to the GOVERNMENT of INDIA,
Legislative Department, to the REGISTRAR, High Court, Calcutta,

No. 16C.

Dated 16th March 1883.

I AM directed to forward herewith 12 copies of a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British Subjects, with Statement of Objects and Reasons, and to request that you will be so good as to move the Honourable the Judges of the High Court, Calcutta, to favour the Government of India in this Department, by the 15th July next, with an expression of their opinion on the provisions of the Bill.

I have, &c.

(Signed) D. FITZ PATRICK.

No. 2.

CIRCULAR NOS. 23-33C. from the SECRETARY to the GOVERNMENT of INDIA, Legislative Department, to all LOCAL GOVERNMENTS and ADMINISTRATIONS.

Dated 17th March 1883.

I AM directed to forward herewith copies of the papers noted in the margin, and to request that
Bill to amend the Code of Criminal Procedure, 1882,
so far as it relates to the exercise of jurisdiction over
European British Subjects.
Statement of Objects and Reasons.

His Excellency the Governor in Council
His Honour the Lieutenant-Governor
you

will favour the Government of India with an expression of ^{his}_{your} opinion on the provisions of the Bill, and with the opinions of the Honourable the Judges of the High Court, }
the learned Judges of the Chief Court, Punjab, }
Madras,
Bombay,
North-Western Provinces and Oudh and of such

other persons as His Excellency in Council
His Honour
you may think fit to consult on the subject.

2. I am also to request that the Bill and Statement may be published in the

* Fort St. George Gazette.
Bombay Government Gazette.
Calcutta Gazette.
North-Western Provinces and Oudh Government
Gazette.
Punjab Government Gazette.
Central Provinces Gazette.
British Burma Gazette.
Assam Gazette.

* *Gazette* in English and
in such other languages as
His Excellency in Council
His Honour
you may deem

proper, and that the dates of
publication of both may be
communicated in your reply.

† Calcutta Gazette.
North-Western Provinces and Oudh Government
Gazette.
Punjab Government Gazette.
Central Provinces Gazette.
British Burma Gazette.
Assam Gazette.

The Publisher of the *Gazette*
of India at Calcutta has been
instructed to furnish the Pub-
lisher of the†
with English copies of the Bill
and Statement (in Gazette form)
for publication in the latter
Gazette.

3. The reply to this letter should be sent in by the 15th July 1883.

No. 3.

LETTER from the CHIEF SECRETARY to the GOVERNMENT of FORT ST. GEORGE, Judicial Department, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

SIR,

Ootacamund, 13th June 1883.

I AM now directed to submit, for the information of the Government of India, copy of the opinions of the Honourable the Advocate-General, certain

* To amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British Subjects, with Statement of Objects and Reasons. selected district officers and Native gentlemen, on the provisions of the Bill,* which accompanied your letter of the

17th March last, No. 23-C. The High Court has not yet furnished its opinion.

2. The present Bill, His Excellency in Council remarks, goes beyond the change that was proposed by the late Lieutenant-Governor of Bengal, about which the Government of Madras was consulted, and which that Government approved (the two Civil Members of Council dissenting), as expressed in my letter and its enclosures under date 8th June last year. To withdraw the Bill altogether, in deference to the opposition it has evoked in certain quarters, would, in the judgment of His Excellency in Council, be a grave political error; but he is of opinion that jurisdiction over European British Subjects should be entrusted only to Covenanted Native Civilians, *i.e.*, those who enter the service after a competitive examination conducted in England.

3. I am to enclose a Minute recorded by the Right Honourable the Governor and one by His Excellency the Commander-in-Chief.

I have, &c.

(Signed) C. G. MASTER,
Chief Secretary.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

From Raja Sir T. MADAVA ROW, K.C.S.I., to the CHIEF SECRETARY to GOVERNMENT, dated Madras, April 9, 1883.

ADVERTING to G.O., dated 2nd instant, No. 937, Judicial, I have the honor to annex a memorandum briefly expressing my opinion on the Bill, therein alluded to, to amend the Code of Criminal Procedure in respect of jurisdiction over European British subjects, and to request you will be good enough to submit the same to His Excellency the Governor in Council.

Enclosure.

MEMORANDUM.

As I have been asked to submit to Government my opinion on the provisions of the "Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects," I beg to offer a few brief observations.

2. The principle of the Bill appears to be perfectly sound. It is the duty of every liberal-minded and far-seeing Statesman to do in his generation what may be in his power towards the removal or reduction of invidious inequalities based merely on race distinctions.

3. Moreover, I have no hesitation in avowing my belief that the natives of India, whom the Bill proposes to invest with jurisdiction over European British subjects, will be found fairly qualified to exercise the same. The administration of justice will not suffer at their hands.

4. It is therefore much to be regretted that the Bill has met with so much opposition from the European community in general.

5. Howmuchsoever that opposition is to be regretted, it cannot be disregarded or made light of in the deliberations of *practical* Statesmanship.

6. I do not think it would be the wisest course to pass the Bill, while that opposition continues to its present extent and in its present intensity. I would not incur the risk of such widespread irritation, and recurring embarrassments in the Empire as would outweigh the good which the proposed law has in view.

7. I would rather wait until the prevailing misconceptions and exaggerated views pass away, and until, at least, the more intellectual and influential portion of the European community come to feel that the Bill only gives effect to a right principle, or that it is at least harmless.

8. In the exercise of prudence in administering a vast and complex Empire, and maintaining harmony between heterogeneous interests, a Government has sometimes to pause, even in the pursuit of just or benevolent objects. It is only real firmness to be able to pause when it is desirable to do so.

9. It is to be earnestly hoped that the Native community will brook any necessary delay with loyal patience, and that the European community will gradually relax their opposition and reconsider the whole question in a more dispassionate spirit.

From the HON. P. O'SULLIVAN, Advocate-General, to the CHIEF SECRETARY
to GOVERNMENT, dated Madras, 10th April 1883.

I HAVE the honour to acknowledge the receipt of the order of Government, Judicial Department, dated the 2nd April 1883, and a copy of the Bill referred to therein to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European subjects, with statement of objects and reasons.

2. My opinion upon the Bill is that it would, if passed, remove an anomaly which ought not to be permitted to exist longer than the circumstances of the country demand; that the tendency of legislation must be to limit, and ultimately to remove, distinctions founded upon race in relation to the administration of justice; but that the time has not yet come to give the jurisdiction provided for in the Bill to the extent contemplated. I think it would have been as well not to have raised the question at all at present, seeing that the new Code of Criminal Procedure only came into force in the beginning of this year, though, whenever the Code comes to be recast, the question is one which will require to be dealt with in some way and in the direction taken by the Bill. Since, however, the question has been raised, and a Bill introduced, I think the prudent course to take would be to restrict the powers conferred by the Bill to class (a) in Section 1, viz., Members of the Covenanted Civil Service. This class would consist of men whose training, experience, and character would, in all probability, enable them to exercise the jurisdiction in a manner likely to be generally acceptable to the public. In time the class may be enlarged with the same results. But it seems to me to be inexpedient to invest classes of officers with criminal jurisdiction in whose knowledge and impartiality persons charged before them would not have confidence. It is to be borne in mind that Magistrates in the Mofussil, at least in this part of India, are at liberty to try criminal cases whenever they are (within their districts) engaged in the performance of their revenue or other duties, and that cases are sometimes tried in remote and comparatively inaccessible places. There is no public, and the person charged would frequently find it difficult to get a competent person to defend or advise him. If some of the officers and attendants of the Court, not always scrupulous persons, wished to throw impediments in the way of the accused person, or to favour one of the parties, they would have many opportunities of doing so without much risk of detection. These difficulties would be aggravated in the case of a European having an imperfect knowledge, or no knowledge, of the language of the district. In cases before Magistrates in the Presidency Towns and Sessions Judges, the proceedings are conducted in open Court, and are subject to the influence of such public opinion as there is available.

3. In this country criminal charges are frequently brought and supported by false evidence. The evidence is sometimes wholly false, but more frequently exaggerated, and few cases are free from falsehood. It happens, too, that a case, true in itself, is supported by the testimony of witnesses who have no actual knowledge of the facts to which they depose, and some of whom would

not give evidence if they did not believe that the case was substantially a true one. A true case may be discredited by reason of the falsehoods which are almost certain to be detected in it. In civil cases there is nearly always some documentary evidence, but, as a general rule, such evidence cannot be expected in criminal cases. The result is that false charges may be treated as proved, and true charges dismissed. I know of no more difficult task than to administer criminal justice in this country, and it is therefore not surprising if (as I believe to be the fact) this is the function of Government which has hitherto been least perfectly discharged.

4. I do not think the objection to giving Native Magistrates jurisdiction over European British subjects is founded so much upon a belief in their want of impartiality as with their want of sympathy with the European, and want of knowledge of his ways and habits. It would be apprehended that false charges would increase, inasmuch as false charges and false evidence would not, speaking generally, produce so much disapprobation in the mind of a Native as of a European Magistrate, and that the Native Magistrate would not take action as effectively as the European Magistrate would, with a view to prevent a repetition of such charges. Then, the ministerial (especially the inferior) officers of a Court have various powers of injury and annoyance in the case of suitors in the Courts in which they are employed. Native suitors frequently think the prudent course, with regard to such persons, is to "purchase peace." I believe many of them are only too anxious to make the purchase from any one who is supposed to have any portion of the commodity for sale. Europeans, however, especially those who have not had much experience of the country, would not be likely to do this, and would be thereby at some disadvantage.

5. The expediency of the present Bill depends upon the question of time. I suppose few would assert that it would have been advisable to have given this jurisdiction forty years ago, whilst, on the other hand, few will maintain that the time for giving it can never come. I think the time will come for giving to Natives of India almost every power which is given to Englishmen; that education and the power and right to manage their own affairs will tend to put down false speaking and false swearing, and corruption in its various forms, and that people will perceive the injury and insecurity caused by such vices. There are very many natives who are as free from these vices as any other persons of any race, and I believe the number will rapidly increase. Without at all adopting views founded upon distinctions of race, I think the practical objections to the Bill rest upon a substantial foundation.

From H. E. STOKES, Esq., Acting District Magistrate, Tanjore, to the CHIEF SECRETARY TO GOVERNMENT, dated Tanjore, 10th April 1883, No. 2152.

I HAVE the honour, with reference to G.O., 2nd April 1883, No. 937, Judicial Department, to state that, in my opinion, Mr. Ilbert's Bill will probably prove innocuous, but is altogether unnecessary.

From P. P. HUTCHINS, Esq., on Special Duty, to the CHIEF SECRETARY TO GOVERNMENT, dated Ootacamund, 14th April 1883.

I HAVE the honour to acknowledge the receipt of a copy of the Hon. Mr. Ilbert's Bill to amend the Code of Criminal Procedure, forwarded for my opinion with G.O., 2nd April 1883, No. 937.

2. In all probability, worked with the discretion which Government might be expected to exercise, the practical result of the proposed changes would have been very slight. Very few native officials would have been made Justices of the Peace, and still fewer sent to districts where it is likely that Europeans would have been brought before them. But if so, the very necessity for this case becomes an argument against the Bill, while, if it is denied that such caution is necessary or would be exercised, then I should certainly be opposed to the Bill altogether. In my opinion the time has not come, if it ever will come, at which English settlers in the Mofussil can, with safety to themselves or to the country, be deprived of their right to be tried by their own countrymen.

3. The reasons against the Bill have been stated so frequently and so forcibly by Mr. Justice Stephen and others, that I will not inflict their repetition on the Government. My opinion in brief is that the practical outcome of the Bill will be either *nil* or mischievous, and that therefore it should not be proceeded with.

From F. BRANDT, Esq., District Magistrate, Nilgiris, to the CHIEF SECRETARY to GOVERNMENT, dated Ootacamund, 16th April 1883, No. 58.

I HAVE the honour to submit the following remarks on the Bill to amend the Code of Criminal Procedure, copy of which Bill was sent to me with G.O., dated 2nd April 1883, No. 937, Judicial.

1. I do not think that it has been shown that, as a matter of administrative necessity, the proposed alteration in the law is urgently called for at the present time.

2. It may become so in time, if and when a considerable proportion of the Members of the Covenanted Civil Service and Civil Service constituted under 33 Victoria, Chapter 3, being Natives of India, occupy the position of Sessions Judges and District Magistrates: this is not so at present, and sufficient for the day are the necessities thereof.

3. As to the anomaly, there are many anomalies inherent in the position which the ruling power occupies in this country, and I do not think that that which is now selected for removal as such is of such importance as to justify the measure now proposed. Nor do I think that the removal of this will satisfy those who consider other race distinctions to be anomalies, but will rather incite them to ask for further and even more sweeping changes.

4. Those who are now asked for their opinion on the subject have a great advantage over others who were called upon to pronounce on the measure before it had been encountered by the fierce opposition which it has elicited.

5. Whatever opinion I might have formed in the first instance—and I can honestly say that I never saw the necessity for the change, and was surprised that so important a measure should have been brought forward so very soon after the new Criminal Procedure Code had come into force—I am decidedly of opinion that, viewed in the light thrown upon the subject by discussions at public meetings and in newspapers of the first class, both English and Indian, the proposal should be withdrawn for some years to come at all events.

6. No one can regret more than I do the acerbity which has been displayed in some quarters in discussing the question; and there have been not unfrequently unjust aspersions thrown out and unfairness displayed in argument, but I am satisfied that the apprehensions entertained by independent Europeans settled and interested in this country are in general sincere, and being so are not lightly to be disregarded for the sake of introducing greater uniformity into a Criminal Code framed with reference to a very exceptional state of society and Government.

From Lieutenant-Colonel T. WELDON, Chief Presidency Magistrate, to the CHIEF SECRETARY to GOVERNMENT, dated Egmore, 18th April 1883, No. 102.

I HAVE the honour, in reply to the Orders of Government, dated 2nd April 1883, No. 937 (Judicial), calling for an expression of opinion in regard to the proposed amendment of the Code of Criminal Procedure, to state that, in my humble opinion, no practical inconvenience is at all likely to result from a continuance of the privilege now enjoyed by European British subjects of trial only by persons of their own race and nationality.

2. The fact that in the Presidency Towns this privilege has ceased to exist has apparently been regarded as an all-sufficient reason for abolishing the special jurisdiction generally. So far as Madras is concerned, the appointment of Natives to be Justices of the Peace, authorized to try European British subjects, is of comparatively recent date. My experience in the Presidency Town and in the Mofussil has not been favourable to an extension of the experiment.

3. As a matter of legislative symmetry there seems to be no logical reason why any First-class Magistrate, or even Second or Third Class Magistrate,

should be excluded from the exercise, in all cases, of all the judicial powers appertaining to his grade. It may be assumed that District Magistrates and Sessions Judges will not be selected solely or mainly on account of their anticipated fitness to deal with the occasional cases in which European British subjects may be accused of offences.

4. I think there must surely be some stronger foundation than mere sentiment for the unanimous cry of alarm on the part of those whom the proposed measure principally affects, and unless this consensus of opinion is to be ignored, some concession should be made to allay the bitter feeling that has been aroused. It is, I submit, most noteworthy that the non-official portion of the community should be roused as it is, for it is that portion which is in the best position to give an independent opinion as to the probable effect of the desired amendment of the law.

From J. G. HORSFALL, Esq., District Magistrate, Ganjam, to the CHIEF SECRETARY TO GOVERNMENT, dated Chatrapur, 25th April 1883, No. 1223.

I HAVE the honour to submit my opinion upon the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. I am bound to confess that the Bill has met with very general opposition from the European residents in India, but this appears to me to have arisen mainly from a misapprehension of the scope of its provisions and the change that will be thereby effected in the existing law.

3. Now that natives are admitted into the Civil Service, and will, in course of time, form a fair proportion of the officers by whom the administration of the country is to be carried on, I am of opinion that the powers sought to be conferred by the Bill must necessarily be granted, at least, in a modified form.

4. I would accordingly strike out Section 1, retaining Section 2, and limiting the extension to District Magistrates and Session Judges only.

5. This will ensure an officer having had considerable experience before he is invested with the special powers, and will remove most of the objections that have been urged against the Bill.

From F. W. EMERY, Esq., Chairman, Madras Trades' Association, to the CHIEF SECRETARY TO GOVERNMENT, dated Madras, 2nd May 1883.

I HAVE the honour to acknowledge receipt of G.O., No. 937, of 2nd ultimo.

2. I am desired by this Association to state that so much has been urged in opposition to the new Criminal Procedure Bill, that it seems scarcely possible to advance any argument in opposition to the same that has not already been considered; but, at the same time, we are glad of an opportunity of stating that we cordially endorse most of the objections raised against the Bill. Our position as Tradesmen necessarily brings us in contact with all classes of the community. We, therefore, possess peculiar facilities for gauging public opinion, and we unhesitatingly assert that, certainly in this Presidency, the alleged "consensus of opinion" in favour of the Bill does not exist. The Europeans, almost to a man, strenuously oppose the measure, whilst the natives—the intelligent natives—treat the question with the most absolute and almost unprecedented indifference, in fact, many of the latter—Barristers and other professional men—have particularly requested permission to attach their signatures to the Madras petition against the Bill. It appears to this Association—and the objections are urged with all deference—that the measure has been prompted by sentiment, introduced without due and proper consideration, with an entire disregard to the interests or feelings of the people most affected, and that it exhibits a want of information on the subject with which it deals, altogether too serious to contemplate.

3. Mr. Ilbert's apology for the Bill "to remove an anomaly" appears to us insufficient justification for the measure, but, even granting the supposed anomaly, we contend that the rights claimed by Europeans are less than the privileges accorded to natives in this country. It is impossible to enter even the High Court in the Presidency Towns, to sit with Native Jurors, and not feel astonishment at the ease with which their minds are swayed, either by the

summing up of the Judge, the arguments of counsel or the remarks of brother jurymen, whilst it is palpable to the most casual observer that a large proportion of evidence tendered by native witnesses is of a most thoroughly unreliable and unsatisfactory character. This is essentially the case where Europeans are concerned; the two races have scarcely an opinion in common, and we respectfully submit that natives are not competent to sift evidence, more particularly as regards Europeans, and that it will be prejudicial to the best interests of the country to invest Native Magistrates with the same judicial authority as Europeans. Happily our experience of Mofussil Courts, presided over by Native Magistrates, is not great, but, limited as such experience is, we are justified in supporting the popular verdict that, in many of these Courts, bribery and the manufacture of false evidence appear to be essential elements to the administration of "justice."

FROM C. A. GALTON, Esq., Acting District Magistrate of Malabar, to the
CHIEF SECRETARY TO GOVERNMENT, dated Calicut, 7th May 1883, No. 1631.

WITH reference to G.O., dated 2nd April 1883, No. 937, Judicial, referring for the opinion of certain selected officers a Bill to amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European

* Chamber of Commerce, Tellicherry.
Do. Cochin.
Wynaad Planters' Association.
European community of Calicut.

British subjects; I have the honour to forward copy of a memorandum on the subject recorded by Mr. Logan before leaving the district, and the replies of the representative bodies* consulted by him (in original).

ENCLOSURES.

Memorandum on the Ilbert Bill for amending the Code of Criminal Procedure.

1. If the opinion of the European community is, as I anticipate, unanimously opposed to the Bill, then I think that the Bill should not be pressed. To pass it would, in the first place, be to alienate the good will of, and to convey a rebuff to, the European community, thereby giving rise to deep-rooted dissatisfaction, the evil consequences of which would be out of all proportion to the administrative advantages to be secured.

2. On the merits of the Bill itself I can add but little to the views which are so ably expressed by the two representative bodies* whose opinions have been received up to date. Those opinions

* Malabar Chamber of Commerce.
Cochin do.

ought to carry great weight as being the opinions of men who see a good deal more than officials do behind the scenes (so to speak).

3. So far as I have been able to judge, there is no extensive prejudice among Europeans against the admission of Natives into the ranks of the Covenanted Civil Service. On the contrary, all enlightened men are unanimous in thinking that the policy of Government on this point is the only practicable policy. Any other would be suicidal, for it would be inconsistent with the great progress made lately in native education and with the growth of a native public opinion. In so far, therefore, as the Europeans in Malabar are concerned, I am, I believe, justified in stating that an opinion which is prevalent and which has received the high sanction of his Excellency the Viceroy himself—viz., that this agitation against the Bill is really an agitation against the native community having any but a subordinate interest in the administration of their own country—is, as a matter of fact, erroneous and requires as such to be distinctly repudiated.

4. A non-official European—and there are hundreds of them in Malabar engaged in commerce, in planting, and in mining—submits almost with complacency to loss of property brought about by hard swearing in the Civil Courts, knowing that he can either recover it on appeal, or at the worst have to write it off to profit and loss in business; but to be deprived (even for a short time) of liberty by hard swearing trenches upon one of the most sacred birth-rights of Englishmen. The remarks of the Chairman of the Cochin Chamber of Commerce on this point deserve, I think, very grave consideration.

5. The fact is, that the native community is only now, after a century of British rule, beginning to realise to any extent that they are, through the happy chance of British intervention in their affairs, the inheritors of that freedom which was won with the blood of Englishmen long before England was known in Eastern seas. This freedom has so far filtered but slowly downwards, and has hardly yet had any effect on the ignorant masses. Until the idea of it is engrained in the character of coolies and of those who are still practically slaves, no Englishman's liberty will be safe, unless he can rely on having, as his Judges in criminal matters, men of his own nationality. For it is undoubtedly a fact that all classes of natives, but practically the lower orders, *dare not* even yet, after a century of British rule and British freedom, do what they would, or say what they think or know. Their actions and their words are adapted to the views of those who have power over them, and they swear black is white with supreme complacency when their own or their superior's interests require it of them. To put the matter in few words, they are still, as a body, unfitted to be the guardians either of their own or of other people's liberty.

6. The progress made already gives sure promise of a still more rapid advance hereafter, but to propose to legislate as if, at the present day, Native ideas and English ideas, in regard to this fundamental privilege, were one and the same, betrays ignorance of the relative position of the two communities, and can only lead to race jealousy and strife. It will be time enough to propose to put Englishmen and Natives on a footing of equality in this respect when the native prefers being tried by his own countrymen to being tried by foreigners. And any one who has had practical experience of district work will say at once, notwithstanding all the steady progress made of recent years, that that time has, *as matter of fact*, not yet arrived.

7. I think the Bill should be withdrawn.

Calicut,
27th April 1883.

(Signed) W. LOGAN,
Collector.

From F. FLETCHER, Esq., Honorary Secretary, Malabar Chamber of Commerce,
to the COLLECTOR OF MALABAR, dated Tellicherry, 20th April 1883.

I HAVE the honour to acknowledge the receipt of your letter, No. 1240-E, dated 9th instant, requesting the views of the Chamber of Commerce here on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. In reply, I have to state that the Chamber view the so-called "amendment" with alarm, and consider it a dangerous innovation.

3. The general arguments against the Bill have been so fully entered into in the newspapers that the Members of this Chamber do not propose to occupy your time with a needless repetition of them, but at the same time would like to express the following views:—

- (1.) In their opinion natives of this country cannot become fit Judges of Europeans, since their early training, their customs, and their habits of thought, &c., are utterly different from those of Europeans. Coupled to this are their strong race prejudices and their known weakness in the matter of bribes, &c.
- (2.) There is not sufficient community of feeling and of ideas to admit of the European and the Native being placed on the same level, and while it may be advisable not to obtrude this fact of European superiority over the Natives, yet it *is* an undoubted fact, and one which, in such matters as that now under consideration, must be recognised.
- (3.) That though the Native Members of the Covenanted Civil Service would probably be less disqualified than many others to exercise such powers, still they would retain their *nature*, and the fact of their being Civilians could not alter this.
- (4.) A Native Member of the Covenanted Civil Service, from his education and qualifications, may expect, and, *certainly does, hope*, to be treated socially on an equality with Europeans, while practically this will *never* be the case.

Feeling that he is shut out from the society of Europeans, he would be very apt to act in a prejudiced manner if any member of that community were brought before him.

(5.) Few in number as the Europeans are, scattered over the country and, in very many cases, isolated in wild districts, where large gangs of labour are kept in order merely by the recognised superior moral influence of the Europeans, the Chamber consider it most essential that they should be guarded by special rights and privileges, and their position, as members of the dominant race, be made such that they shall be treated with proper respect and consideration.

It is, undoubtedly, the fact of the Englishman's hitherto occupying such a position amongst the native population of this country that has preserved him from robbery and insult, and caused his little home to be universally respected.

(6.) Should the Bill ever be passed (which the Members of this Chamber fervently trust may never be the case), they think that it will rapidly destroy the planting and similar industries in India.

That prestige which enables the Englishman to hold his own in this country would at once be lost, and his position become untenable. This would deter them from settling in India and bringing their capital here and developing the country's latent resources.

(7.) In conclusion, the Chamber feel that, were the Bill passed, it would be admitting the thin edge of the wedge, which would ere long, in spite of European opposition, without much difficulty be driven home.

From W. N. BLACK, Esq., Honorary Secretary, Chamber of Commerce, Cochin,
to the DISTRICT MAGISTRATE, Malabar, dated Cochin, 19th April 1883.

I HAVE the honour to acknowledge receipt of your letter, No. 1240-E, of 9th instant, asking for an expression of opinion of this Chamber as regards the Bill to amend the Code of Criminal Procedure, 1882, as far as relates to the exercise of jurisdiction over European British subjects.

2. In reply, I am instructed to inform you that a meeting was held on the 8th ultimo under the auspices of the Chamber to consider this subject, and as the resolutions then passed embody the unanimous views of this Chamber, I enclose a copy of proceedings for your information.

PROCEEDINGS of a Meeting held at the Club on the 8th March 1883, under the auspices of the Chamber of Commerce, to consider the Hon. Mr. Ilbert's Bill.

There were present—Messrs. Brunton, Sealy, Oughterson, Grieve, Wright, Cavendish, Sparrow, Highton, and Black.

Mr. Brunton, who was elected to take the chair, opened the proceedings with the following remarks :—

Gentlemen,—I do not think that I need say much respecting the object of our meeting. So much has been said and so well by others, and published in the newspapers, which, I take it for granted, all of you have read, that there is little or nothing to be added.

2. In conversation with those who uphold Mr. Ilbert's Bill, I have been told that to be consistent I ought to object to the power now held by Native Judges of trying civil cases, in which the property of Europeans, to any amount, is subject to the decision of those Judges, and at the first blush there appears to be some reason in this, but on looking deeper it will be seen that there is no comparison between civil and criminal jurisdiction. An unfortunate European up-country has a civil case, through the perjury of witnesses, decided against him, he can appeal at once and get a hearing before his own countrymen *and can be reinstated* in his original position, or even, if unsuccessful in obtaining justice, loses at most so much property or so many rupees; but if he be brought up on a criminal charge, falsely brought against him, and supported by perjury, and he be imprisoned even for a day, no power on earth can wipe out the stain which will rest on his name to his dying day, although his sentence be afterwards annulled and his character cleared. The stigma of being an ex-convict or jail-bird can never be effaced.

3. If all anomalies are to be swept away, and the prejudices of different races or castes are to be ignored, what a task is before Mr. Ilbert! What greater anomaly could there be, for instance, than a Mussulman Judge sentencing an English-

man for bigamy, when he, the Judge, has four lawful wives at home? The Englishman's rule is successful, *because* he shuts his eyes to anomalies and allows for the prejudices of his neighbours, whether they be sentimental or otherwise, so that they do not inflict injuries on others. Call our objection to this Bill a prejudice, sentimental or otherwise, the fact remains that we object in the strongest manner to any legislation which may even lead to unprotected countrymen of ours in Mofussil stations being left in criminal charges to the tender mercies of any but our own countrymen.

4. I think that the present agitation and indignation raised throughout the country in the breasts of Englishmen against this most uncalled for attempt to cancel our most prized privileges will convince the Government that it has made a mistake.

5. Let the Natives of this country show us, by, say, half a century of honourable, upright, impartial conduct in the high positions to which they have been already raised, that we have no good reason for fearing to entrust our liberty in their hands, and then it will be time to ask us to abandon our prejudices. Other gentlemen spoke in a similar strain, all condemning most heartily this purposed violation of our national rights.

6. The following propositions were then put and unanimously carried:—

First.—That the following resolution, passed at a meeting held at the Madras Chamber of Commerce on 23rd February, be adopted:—

That, in the opinion of this meeting, the alteration in the law proposed by Government in the Bill entitled "A Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects" demands the concerted opposition of the European community throughout British India as being an unnecessary sacrifice to ideal legislation of our highly-prized right, and as likely to seriously check the introduction of European capital into India.

Second.—That this meeting agrees to give its best support to the efforts of the Committee formed in Madras for the purpose of opposing the passing of the Hon. Mr. Ilbert's most objectionable and unnecessary Bill.

Third.—That to defray any necessary expenses for the above purpose, it undertakes to subscribe to the fund opened in Madras.

From G. L. YONGE, Esq., Honorary Secretary, Wynaad Planters' Association, to the DISTRICT MAGISTRATE, Malabar, dated South Wynaad, 6th May 1883.

I HAVE the honour to own receipt of your letter of the 9th ultimo calling for an expression of opinion on the part of the Association on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. I am directed by the Association to say that they view with the greatest alarm the proposed alteration in the law, an alteration, they think, at once most dangerous and uncalled for, and, on behalf of the great body of European settlers in this district, they most emphatically enter their protest against it.

3. The Association deplores the harm that has already been done by the bare proposal of such a change in the law, and they most earnestly hope that the Government will listen to the almost unanimous expression of alarm and disapproval that has shown itself throughout the non-official European element in India, and will withdraw the obnoxious measure.

4. That the country is not ripe for such a radical measure is, the Association ventures to assert, proved by the language used throughout India by the Vernacular Press. Already the opinions of those who are hostile to the Bill have been stigmatised on "the senseless clamour of an ignorant rabble," and already the Native Press ventures to talk of an India "united from the Himalayas to Cape Comorin with a national flag and a national ruler."

5. The Association has no hesitation in saying that, since the meeting, nothing has occurred heretofore so calculated to disturb the social relations between the Europeans and Natives as this proposed change in the Criminal Procedure Code, a disturbance which, were the proposal withdrawn to-morrow, will take some years to settle down again.

6. The Association is unable to understand the reasons for the proposed change, which, it appears to them, will only tend to gratify the self-conceit of a few hitherto unknown Native Magistrates, and the Association deprecate a concession which will please such a limited few, and which, at the same time, most justly alarms and aggrieves the great body of European residents in India who are developing the resources of the country to an extent which, directly and indirectly, promotes the welfare and prosperity now and in the future of every subject in Her Majesty's Indian Empire.

From the EUROPEAN COMMUNITY OF CALICUT, to the COLLECTOR OF MALABAR,
dated Calicut, 24th April 1883.

IN compliance with the request contained in your communication, No. 1240, dated the 9th instant, addressed to Mr. T. J. Ferguson, we have the honour to lay before you, in a very brief and general form, our views with reference to that portion of the Bill to amend the Code of Criminal Procedure (now commonly known as Mr. Ilbert's Bill), by which it is proposed to extend jurisdiction over European British subjects to Native Magistrates.

2. We are most strongly opposed to any such alteration of the law; we consider such a change not only uncalled for, but calculated to lead to the very worst results, politically and socially.

3. The extension of jurisdiction to Native Magistrates over European subjects is, so far as we know, uncalled for except by a few Native Magistrates, to gratify whose vanity it is proposed to sacrifice a privilege most highly prized by Europeans in the east. We respect the religious and social privileges and customs of our native fellow-subjects, and it has heretofore been the policy of the ruling power to see that such privileges and social observances were preserved to the men of different races and creeds who inhabit this continent.

4. We most emphatically object to the prospect which the passing of this ill-advised Bill affords us and our children of having to appear to answer criminal charges before a Magistrate who, however well educated he might be, would still be ignorant of our customs, and quite unable to form a true and unprejudiced opinion of many cases in which Europeans might have to appear.

5. The reservations and safeguards pointed out in your communication in no way alter our views, or reconcile us to the proposed change. We hold that native gentlemen are unsuited to occupy, in a District such as Malabar, the appointments now filled by Covenanted European Civilians, and to invest Native Magistrates of any class with criminal jurisdiction over European subjects will, in our opinion, lead to most disastrous results.

6. Many of us have been residents in this district for a long period; we have lived on good and friendly terms with our native neighbours; we have joined them in their endeavours to promote the advancement and welfare of the district; we have appeared before them and bowed to their decisions in the various Civil Courts in which they sit; but we protest on our own behalf and more especially on behalf of our numerous fellow countrymen and countrywomen who are settled in remote parts of the Mofussil, away from the controlling influence of the Press or of public opinion; we protest on their behalf against the proposed alteration in the law; and we do not believe that the intelligent, educated, and well-meaning portion of the native community will respect us less for defending ourselves against this attempt to deprive us of our time-honoured privilege.

From H. WIGRAM, Esq., District and Sessions Judge, Coimbatore, to the
CHIEF SECRETARY TO GOVERNMENT, dated Coimbatore, 7th May 1883, No. 9.

I HAVE the honor to reply to G.O., dated 2nd April 1883, No. 937, Judicial.

I am clearly of opinion that the proposed legislation was unnecessary, and that the natives, as a body, would have been quite content to let matters be as they were if the question had not been raised.

As, however, the Bill has been introduced, the only practical question is whether it ought to be proceeded with or abandoned.

2. I cannot but regard the objections raised by the European non-official community as mostly, if not wholly, sentimental. I do not apprehend that any injustice would occur from entrusting selected natives with criminal jurisdiction over Europeans.

The late Mr. Ratnavelu Chetty, of the Madras Civil Service, was, without exception, one of the best Magistrates with whom I have come in contact, and was perfectly qualified to deal with any criminal charge that might be preferred by European against European, or by Native against European.

3. At the same time sentimental objections cannot be wholly disregarded. It may be a bad policy to give way to groundless agitation, but it is a worse policy to alienate the sympathies of the non-official European population for the sake of an idea which will certainly benefit no one, and may possibly, in rare instances, prejudice individuals. I think, therefore, that the proposed legislation should be abandoned.

4. If, however, administrative inconvenience is really likely to result from a Sessions Judge or District Magistrate not having jurisdiction over Europeans, I think that legislation should be confined to making Sessions Judges and District Magistrates *ex-officio* Justices of the Peace.

This might be done by simply adding to Section 25 of the Criminal Procedure Code a clause that, notwithstanding anything contained in Section 22, all Sessions Judges and District Magistrates are *ex-officio* Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving.

From H. ST. A. GOODRICH, Esq., District Magistrate, Vizagapatam (on leave at Simla), to the CHIEF SECRETARY TO GOVERNMENT, dated ———.

I HAVE the honour to reply to the reference contained in G.O., No. 937, dated 2nd instant.

2. The question appears to be whether it be expedient that the rulers of this Empire should resolve that men of the race who founded and maintain the Empire shall no longer be exempt from trial before Magistrates chosen from among the subject races.

3. The theoretical aspect of the question has been fully discussed elsewhere : I confine myself to the practical.

4. The Native Civilian, selected by competition, had enjoyed a glimpse at European life, and was a man of industry and of acute and disciplined intellect, though his social standing in his own nation was not guaranteed. It is perhaps expected that the present system of selection will give us a man of higher position amongst his countrymen.

5. Take the district I have lately administered. Mr. Ch. Venkata Jaga Rau may, at any moment, be sent there as Senior Assistant Magistrate. A criminal charge against Mr. F. Minchin would fall to be disposed in Mr. Jaga Rau's Court. (I prefer a particular to a general illustration, and do not in the slightest degree reflect on the character of either of the gentlemen named.) The Government will readily understand that circumstances might easily arise disposing persons to bring false charges against the one, and to bring very powerful pressure to bear upon the other. It is not expedient that these risks be run without cause.

6. The European British subject has, I believe, confidence in the class of Magistrates who now exercise jurisdiction over him : it is certain that he has not confidence in the class (Covenanted Civilians, Natives of India) before whom he may be tried, if the proposed alteration in the law be effected.

7. It seems to me certain that no administrative difficulty and no inconvenience to individuals worthy of consideration can arise from the maintenance of the privilege which the European British subject enjoys.

8. I believe that the Natives of India speak the truth when they deplore the existence of the gulf which total diversity of manners and morals causes ; that they would, with the best intentions, be found incompetent to estimate the probable truth of charges made against European British subjects, and to appreciate the motives which may have determined their course of action under known or conjectured circumstances.

9. The small but noisy class of Hindus which hailed the proposed measure as a boon to the Native is in no sense representative.

10. It is a noble endeavour to unite the Natives of India to the race which governs them by granting the fullest liberty to every subject of the Empire, but the conferring upon a few of the official class power to try Englishmen will not greatly gratify the Hindus at large.

11. The Natives of India regard the official class taken from their midst with reserved respect, and, speaking generally, that class has not gained the most intimate confidence of Englishmen, whilst losing much of its countrymen's sympathy.

12. I have read most of the speeches and writings in advocacy of the change proposed, and remain convinced that it is profoundly mischievous.

From the HON. HUMAYUN JAH BAHADUR, C.I.E., to the CHIEF SECRETARY TO GOVERNMENT, dated South Adyar, 12th May 1883.

WITH reference to G.O., dated 2nd April 1883, No. 937, Judicial, I have the honour to submit that, subject to certain reservation already indicated by His Excellency the Viceroy in his observation made in the Legislative Council, I do not see any objection to extend the jurisdiction of certain Native Magistrates of tried ability and experience posted in the districts, and of a grade similar to that of the Presidency Magistrates and upwards, the number of whom in each Presidency will not be large, I therefore generally agree with the Bill to amend the Code of Criminal Procedure. The changes contemplated thereby are the necessary consequence of the enlightened policy of administration pursued in India by the successive Viceroys, supported by Secretaries of State, and such eminent Statesmen who cause some improvement for the good to evolve out of every step they take in swaying the destiny of the people and consolidating this mighty and glorious Empire. The principle of the measure thus commends itself to maintain emphatically, and its subject-matter, in my humble opinion, has reached such a stage that passing of the Bill under consideration into law cannot be delayed any longer.

From the Hon. Raja G. N. GAJAPATEE ROW, to the CHIEF SECRETARY TO GOVERNMENT, dated Madras, 12th May 1883.

IN obedience to the Orders of Government, dated 2nd April last, No. 937, I have the honour to forward herewith my opinion on the Bill to amend the Code of Criminal Procedure, 1882.

Enclosure.

MEMORANDUM.

I HAVE considered over the Jurisdiction Bill in all its bearings.

As the subject has been so fully discussed, both in and out of the Governor-General's Legislative Council, I think it is redundant on my part to enter into any discussion about it. In point of justice, fairness, and impartiality, I am of opinion that the Native Members of the Covenanted Civil Service are quite competent to judge European British subjects as in the definition given by the Hon. Ilbert.

The training which they have received in England, the influence of the Press and Bar they have experienced there, and superior decisions they have come in contact with, and also private English opinion of the cases out of Court they have studied, give them not only a high proficiency, but sufficient self-respect to themselves to arrive at a correct judgment in trying European British subjects, whether cases arise from among themselves or between them and the Natives. At present, practically Native Presidency Magistrates, whose training must be acknowledged as inferior in calibre to that of Covenanted Native Civil Servants, are deciding cases in which the European British subjects are involved with credit and efficiency. Although the Press and public opinion are much stronger in the Presidency towns than in the Mofussil, the very

deficiency of the same in country towns will ensure, in my opinion, a greater care and caution in a Mofussil Native Covenanted Civil Servant in deciding such cases with better judgment and impartiality, for his reputation will have to be protected from the ken of a superior authority, High Court and Government, also from the Press of the Presidency, to which Mofussil representations are sure to be made on the subject.

When it is thought Natives are competent to judge impartially and efficiently in civil cases between Europeans and Natives and Europeans themselves, it is anomaly to suppose that Native Covenanted Civil Servants are not competent to try and decide criminal cases between European British subjects and Natives or European British subjects themselves, as in the definition above named.

I am not in favour of giving the jurisdiction to Native Civil Servants created under statutory laws, at least for the present.

(Signed) G. N. GAJAPATEE ROW.

From the Hon. T. RAMA ROW, to the CHIEF SECRETARY TO GOVERNMENT, dated Madras, 13th May 1883.

I HAVE the honour to submit the following in connection with the Code of Criminal Procedure Amendment Bill, in compliance with the Proceedings of Government, dated 2nd April 1883, No. 937, Judicial.

2. If it had been proposed in the aforesaid Bill to empower all Magistrates of whatever grade with jurisdiction to try European British subjects, I would have no hesitation to emphatically assert that it is most inadvisable and even dangerous. It is too well known that the lower Magistracy exercise their powers—powers which affect the personal liberty of the subject—in a most arbitrary and very lax manner. But, inasmuch as the Bill introduces no such sweeping reform, I think I am bound to give my opinion in favour of a legislative measure which removes an anomaly and which has been rightly called the logical outcome of the admission of natives into the ranks of the Civil Service.

3. The one very great objection which has been raised against this Bill, and the only one which I mean to refute as groundless, is that Natives—be they Covenanted Civilians or Civilians under statutory laws—are incapable of understanding the European, his modes of thought, his feelings under circumstances far different to and greatly varied than those to which Natives are familiar, that in consequence of such incapacity he becomes unfit to give the European proper justice, as the Native Judge cannot ascertain his motives. If those that put forth this argument had given instances of this incapacity in Native Judges in recent times, I should have accepted meekly the strictures which are thus gratuitously offered to Natives, but I am afraid it is not easy to do so. When Native Presidency Magistrates, who are men who have risen from the lower grades of the Judicial service, and who do not possess (always allowing exceptions) the special qualifications with which Native Civil Servants are credited, are thought competent to try European British subjects, and even to sentence them to the punishment of whipping, why not Native Civil Servants—Covenanted and Statutory—exercise the simpler and inferior powers which the Bill provide them.

4. I do not for a moment believe that the opponents of this Bill entertain any but the most honourable opinion of the respectability, the impartiality, and the fairness of the Native Civil Service or of those Native gentlemen who have passed in England. So that the whole question resolves into one single factor: are the Native civilians competent to try European British subjects? All that I wish to say is “Give them the chance and watch carefully how they use it.” Even the slightest misapplication of these powers cannot fail to be detected by Government and by the zealous eyes of the European community. Our Native High Court judges and our Presidency magistrates have given no room for you to entertain any but the highest opinion of their competence and of their fairness and impartiality.

5. There is only one more point which I wish to notice. A Munsif of the lowest grade is competent to decide civil cases between European and Natives as between themselves. Are not civil matters infinitely more complicated and

more difficult to unravel than criminal cases? It has not been hitherto anywhere said that Munsifs do not exercise their powers properly, and that in disputes between Europeans, or in which a European is a party, the presiding judge acts in a reprehensible manner. Has there been anything to justify a similar agitation of the European community at the time when Natives were empowered with civil jurisdiction over European British subjects.

6. If this Bill becomes law, there is one anomaly the less in the law of India, and it gives Government a claim to ask the Natives to give up some of their privileges too which stand in the way of a completely uniform and even system of laws.

From E. F. WEBSTER, Esq., C.S., to the CHIEF SECRETARY TO GOVERNMENT,
dated Ootacamund, 14th May 1883.

I HAVE the honour to acknowledge the receipt of G.O., 2nd April 1883, No. 937, Judicial, in which I am requested to submit my opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. There are in this Presidency no Assistant Commissioners, and I do not suppose there is any present intention to provide Natives of India with employment as judges of Small Cause Courts; the question, therefore, which has been referred to me, may be stated thus :—

Is there good reason to believe that the present exigencies of the public service require that the same jurisdiction which is now exercised by certain justices of the peace over European British subjects should be exercised by the Native Members of the Covenanted Civil Service falling under Classes (a) and (b).

3. With respect to Madras requirements, I am not aware that any administrative difficulty has as yet been felt or is likely to arise from the want of Native magistrates or judges endowed with powers to try European British subjects. Nor is there at the present moment a single member of the Covenanted Civil Service, who is a native of India, falling under Class (a), while of those Native gentlemen who, under the Statute 33 Vic., cap. 3, have recently been admitted into the service as probationers, only two have yet succeeded in qualifying themselves for permanent employment. Several years must, therefore, elapse before these officers can possibly exercise the jurisdiction contemplated by the Bill. The truth appears to be that the question, at all events so far as it affects Madras administration, is entirely a speculative one, without the smallest claim to be discussed as lying within the region of practical politics.

4. In some other parts of India, however, this is very far from being the case, since there are in Bengal, as I understand, and perhaps elsewhere, Native members of the Covenanted Civil Service, who, if only they had happened to be European British subjects, would, by reason of the high official positions to which they have been advanced by Government, be empowered to exercise jurisdiction over European British subjects, but who are precluded from this solely because of their place of birth or descent, and the question is whether the disqualification under which these gentlemen are placed ought not to be removed by the Legislature with as little delay as possible.

5. In discussing this point, it will be convenient to begin by describing the position of a European British subject in this country as regards his subjection to the civil and criminal courts exercising jurisdiction outside the Presidency towns, the extent of punishment to which he is liable in such courts, and the special privilege and protection to which the law entitles him.

6. It will then be easy to understand the precise nature and extent of the proposed changes, and to come to some understanding as to whether they are reasonable in themselves, and such as are urgently required in the interests of the public service.

7. First, then, as to the position of a European British subject with respect to the Civil Courts in the Mofussil.

8. Before the year 1837 Europeans were entitled to bring their civil causes before the Supreme Courts in the Presidency towns, but by an Act passed in that year (commonly known as the Black Act) all such causes were transferred from the Supreme Courts to the Courts of the East India Company, and ever

since that time these Courts have continued to exercise such jurisdiction. In paragraph 10 of the last edition of the Civil Procedure Code, the principles of the Act of 1837 are reaffirmed in the following words :—"No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of the Courts." Now, just as no person is exempted from the jurisdiction of these Courts, so is no person disqualified from exercising civil jurisdiction by reason of his place of birth or descent, and the consequence is that, as the law stands, a Native judge might in a civil suit issue a warrant for the arrest of a European British subject in case of his non-attendance as a witness, might send him to jail for debt, might punish him for contempt of court, or give judgment against him in a suit for fraud or libel.

9. Next, as to the position of a European British subject with respect to Criminal Courts in the interior. A magistrate, who is a European British subject, a justice of the peace, and a magistrate of the first class, may sentence a European British subject to three months' imprisonment or to 1,000 rupees fine, or to both, while a Sessions Judge, being a European British subject, can sentence such an offender to a year's imprisonment or to fine, or to both, but if the trial be before an Assistant Sessions Judge he must have held that office for at least three years, and must have been specially empowered by Government to try European British subjects.

10. Every European British subject brought to trial has, moreover, certain privileges especially reserved to him and others of his nationality, but which do not apply to the Natives of the country. Thus, for example, he may claim to be tried by jury or assessors, as the case may be; he may appeal to the High Court or Court of Session against every sentence of fine or imprisonment, however small, and from which there is no right of appeal in ordinary cases; and, if detained in custody, he can apply to the High Court for an order directing the person detaining him to bring him before the High Court.

11. Such, then, briefly put, is the judicial position of the European British subject in India. He is, and has been for very nearly half a century, as completely subject to the control of Native Civil Judges, as any Native of the land, while, as regards his liability to the Criminal Courts, he has the special privilege of carrying an appeal to the High Court in every case, no matter how trifling, and the right of applying to the same Court for his immediate release, if confined.

12. Now, all that the present Bill proposes to do is this: to alter the rule which relates to the race qualification of the Judge who is empowered to try European British subjects, but to leave untouched the privileges mentioned above and the limitation on the sentences which may be inflicted by the Judge.

13. To my humble judgment, it appears that the proposed change is but the necessary outcome of the declared policy of the Crown and Parliament, that natives of India shall be more and more largely admitted into the Covenanted Civil Service, and, judging from the history of the past, I am unable to regard the provisions of the Bill as likely to prove serious to the European community, all of whom (many of them, no doubt, quite unconsciously) have for many years continued to live and to thrive too under a system of civil law such as that described above.

14. Whether the proposed change be urgently required in parts of India lying outside the borders of this Presidency, and whether, in such regions, there are native officers qualified by position and proved ability to exercise this special and limited criminal jurisdiction over Europeans, I have no means of knowing, and upon these questions, therefore, I do not propose to hazard an opinion; but, if the Government be satisfied that the interests of the empire require that such powers should be conferred on certain selected Native members of the Civil Service in Bengal and elsewhere, then I venture to express a hope that they will not suffer themselves to be deterred from carrying into law a Bill which they believe to be just and necessary, simply because it has called forth (greatly as this is to be deplored) widespread and strenuous opposition on the part of the European community.

15. The history of the year 1837 shows that the European public of that day were at least as bitterly opposed to the transfer of civil jurisdiction from the Supreme to the Mofussil Courts, as a large and influential body of them now are, to the present Bill, and that, in those days, ruin to the country and

the utter destruction of European enterprise in India was confidently predicted as the inevitable result of the Bill becoming law.

16. There was again much the same kind of opposition in the year 1849 to a proposal to empower European Magistrates in the Mofussil to exercise jurisdiction over European British subjects, and a Bill introduced with that object was, in consequence, withdrawn, but only to be again introduced and to pass into law in the year 1872. In 1874 an Englishman was sentenced in Jessore to a term of imprisonment for committing a serious assault on a native of India. Upon this there arose a perfect storm of indignation on the part of the Europeans, an appeal was carried to the High Court; the Chief Justice (Sir R. Couch) was admonished to do his duty *by his countrymen*, all the evils which had been predicted of the Black Act were again predicted; capital, it was said, would be driven out of the country; the English would be ruined, and so on, but as men's passions cooled, more reasonable opinions prevailed, and now the Act has been worked for upwards of 12 years to the entire satisfaction of everybody.

17. Seeing, then, how unreasonable were the apprehensions on very similar occasions in the past, may we not reasonably believe that much of the present outcry is no better founded?

From J. F. PRICE, Esq., Magistrate of the Chingleput District, to the CHIEF SECRETARY TO GOVERNMENT, dated Saidápet, 14th May 1883, No. 224.

I HAVE the honour to reply to the Proceedings of Government, Judicial Department, No. 937, dated 2nd ultimo.

2. Theoretically, there is nothing that can be alleged against the Bill. I must say, though, that I do not think that the members of the Civil Service admitted in India—a class to which I suppose that Extra Assistant Commissioners also belong—are equal, or are ever likely to be equal, to those who have entered it by competition in England. I am the only officer in this Presidency who has had the privilege of having natives of both denominations under him. I carefully watched them, and I have no doubt that my view is correct. The former of the classes mentioned see the European in India alone, and have, practically, little if any knowledge of him, or definite ideas of his ways, thoughts, feelings, or manners. I am afraid that if power to deal with Europeans be given to these officials, they would, even supposing that they were not swayed by considerations of any sort, err, either on the score of leniency or of severity.

3. I admit that if the experiment is ever to be made, now is the most fitting time, and I admit, also, that the number of European British subjects likely to be affected by the proposed change of the law cannot, at present, be very large, but I consider the introduction of the Act, even if altered so as to include covenanted civil servants who have come out from England alone, very undesirable and impolitic.

4. Had the Europeans and Natives of India, to use the stock word, “fused” or shown any real inclination to fuse, the case might be different, but I believe that I am not in any way outside the truth, in saying that there is not the slightest genuine tendency in that direction; that, on the contrary, the two races have been, for years, steadily floating apart, and that there is not the good feeling between them which existed even when I first entered the service. We are different from them in everything: in creed, manners, customs, and thought, and whatever may be the theories on the subject, our position in the country, of the nature of which there cannot be much doubt, is such that it can never make our relations other than they are, though they may be for a time glossed over with a coating of varnish. The natives can never adopt our lines in their integrity, and we can never take to theirs. It is not for me to pretend to account for the state of feeling to which I have alluded; that it exists is I believe an acknowledged fact, and, as far as I have seen, it is stronger as regards the non-official than the official class; the reason which I have heard assigned for this being that the latter is a man in power, and that it is dangerous and undesirable to cross him. That the passing of the Act will cause great exasperation amongst Europeans throughout the country, is, I think, pretty clearly proved by what has appeared in the public prints. I

have not taken sufficient interest in the matter to read everything, and in what I have read, there has been what I should call a good deal of rubbish, but it appears to me that there are two causes which have brought about the uproar which has occurred, viz., (1.) A state of feeling between the European and Native very far different from what was supposed by those in authority to exist, which has been smouldering for a considerable period and which has now, on the application of the match, burst out into a flame which will not be readily extinguished. (2.) A strong distrust of the integrity of Native officials. By the latter expression I do not mean to convey that there is distrust as to actual honesty in the ordinary sense of the term. What I allude to is the feeling that with the European Magistrate no consideration is likely to be successfully brought to bear, whilst with the Native there are causes which must, to an almost absolute certainty, affect him. Caste prejudices, fear of the occult influence which is often brought to bear upon an official who will not act in accordance with the opinions, wishes, or views of Natives in power, and dread of Native opinion are amongst these. The Natives themselves show their appreciation of a difference between their own countrymen and the Englishmen, by the way in which they so constantly beg to have their cases decided by the latter.

5. I must say that my faith in the fairness and integrity of natives of the higher classes, and from which recruits for the Civil Service must be drawn, has been very grievously shaken by my experiences of the last two years. What these experiences have been, it is needless for me to mention, as they are before Government. Knowing what I do, and official though I am, I would, in honest truth, far rather be tried by a European than by a Native. I can realize pretty clearly what the feelings of a non-official on the subject must be.

6. It may be said that I am prejudiced by what I have gone through. I do not think that I am. I have my own views as regards the admission of natives into the Civil Service, but, whatever these may be, I have not ventilated them, and I have certainly done my duty by the young native officers who have been under me. It is exceedingly improbable that I shall ever get into a scrape, likely to bring me before a Magistrate; my time of service in India is rapidly approaching its close, and I hope to be able to go as soon as it terminates. I have no relations in the country and none of them are ever likely to come to it, and I shall never, even at the utmost, myself see anything more than the beginning of the effects of the Act if it is passed. I have, therefore, no ground for personal feeling in the matter. Government have asked my opinion, and though I would have preferred not being consulted on the subject, I deem it my duty, however it may be received, to say honestly what I think.

7. I consider it highly impolitic to introduce a measure the effect of which upon the relations between the Englishman and the Native of India will, whatever may be hoped, inevitably be to induce a state of feeling which can only end in trouble, and that of a serious character.

From H. P. GORDON, Esq., District Magistrate of Bellary, to the CHIEF SECRETARY TO GOVERNMENT, dated Bellary, 15th May 1883, No. 1,516.

I HAVE the honour to reply to G. O. of 2nd April 1883, No. 937, Judicial.

2. I am of opinion that it is undesirable to extend to Native Magistrates or Judges in the Mofussil, jurisdiction over European British subjects, as defined in the Criminal Procedure Code (Section 4, u), but I think that that definition is unnecessarily wide, and includes many persons, for whose exemption from the ordinary tribunals there is no sufficient reason.

3. My main ground of objection to the proposed measure is that Native Magistrates are not competent to estimate the motives of the conduct of a class, which, as I would limit it, is actuated by habits, by a code of morals, and by social sanctions widely different from those prevalent among natives.

4. This objection, in my opinion, applies with equal force to the cases of all classes of Europeans, to that of the rough, illiterate, and possibly brutal loafer, as to that of the woman of refinement and culture, a product of civilization of which even educated natives must at present have an inadequate apprehension.

But the cruelty of subjection to an incompetent Court, would, of course, be much greater in the latter case.

5. It may be urged that the same ground of natural incompetence may be advanced as a reason for not giving Europeans jurisdiction over natives. I admit the validity of that objection to a large extent, and should do so without reserve were it not that the natural incompetence in this respect of Europeans is counterpoised by the great advantages they as Judges enjoy, in the absence of ties to the native population, which would be likely to warp their judgment and in their incorruptibility, the result mainly of their subjection to a different public opinion. That these qualifications are considered of great value by those who come before our Courts, is, I think, proved by the avidity with which the tribunal of a European Magistrate is sought. I have never known a case in which an application for transfer of a case to a European Magistrate was opposed, save on grounds quite disconnected from the character of the tribunal, while applications for transfer of cases to the files of European Magistrates on the ground that justice cannot be elsewhere expected are very common and would be still more so, if they were not almost always rejected.

6. It may be presumed that the class of natives who would now be selected as Justices of the Peace would not be liable to the imputation of corruption. I do not object to their employment on that ground, and the mention of the matter is merely incidental to my argument in justification of a European tribunal for charges against natives.

7. Nor do I mean to imply that Native Magistrates would necessarily be biassed against Europeans. I think in many cases they would be influenced unduly in their favour, for strength of moral fibre is less frequent among them than among picked Europeans.

8. No doubt native gentlemen who may pass into the Covenanted Civil Service by competition in England would have some opportunities of acquiring a knowledge of the habits of thought and manners of Europeans, but there is no single officer of this character in the service at present, and it may be presumed, regard being had to the facilities for entering the service without examination offered by the rules made under the Statute 33 Vict. c. 3., that the number of native candidates at the examination in London will be in future less than before.

9. Theoretically, the most desirable arrangement would be that natives should be tried by natives, and Europeans by Europeans, but I think I have shown that the trial of natives in this manner would not be entirely satisfactory to them. On the other hand, I have never heard it imputed that, in the Mofussil, Europeans met with partial treatment at the hands of European Magistrates. On the contrary, the notion that European Magistrates are sometimes unduly severe on their compatriots is not of infrequent occurrence, and in their anxiety to avoid the imputation of partiality, it is possible that they are at times biassed in this direction.

10. While, then it may be inexpedient to confine the trial of natives to the best natural tribunal, no reason appears to exist for the transfer of cases against Europeans from a natural tribunal, which is satisfactory to them and which has not hitherto been objected to by others, to another less naturally competent, in which they have no confidence.

11. It appears to me that the confidence of a class which though small in numbers possesses an intelligence and importance out of all proportion to its numbers, in the Courts to which it is made subject, cannot wisely be treated with indifference by the Government, and that very strong grounds of expediency (and these do not appear to me to exist) should be alleged in support of the substitution of less satisfactory tribunals.

12. It is, I think, matter of notoriety that, until this Bill was proposed, no objection was ever heard in this Presidency to the exemption in criminal matters of Europeans from the Native Courts. If this be so, the change can hardly have been desired by any considerable class of the population. I would ask if, in the numerous petitions which have been presented to successive Governors of this Presidency, in all parts of the country, this matter was ever brought forward as a grievance?

13. It is said that the exemption is a case of anomalous privilege. This ground has been so well worn that it may well be left untouched by me. It is no doubt a privilege to be tried "by one's peers," but it is strange that in a

country where class privileges recognised by law abound, it should be sought to withdraw a privilege, which harms no one, from a class, on which the Government must for a long time to come rely for the administration of the country, and for the development of its resources.

14. The administrative convenience of the proposed measure as it affects this Presidency is less than at first sight would appear.

15. At present there is no native officer in the Civil Service who entered by competition, and it is unlikely that the number of such will ever be considerable. It cannot be so for a long time to come. As to the native Civil Service, the class from which it was intended by the Government of India that this service should be filled, can hardly be said to exist in this Presidency.

It is presumed that Government would not invest with powers of a Justice of a Peace officers who were not conversant with the manners of Europeans, and had not lived upon terms approaching to social equality with them. If this be granted, it would seem that it will be long before the native Civil Service will be able to supply any number of gentlemen qualified to try Europeans.

There are at present but three members of the Native Civil Service.

16. Much of the apprehended inconvenience could be avoided by care in the posting of officers. I may instance the present state of this district in illustration of my meaning. The town of Bellary contains a very considerable population of European British subjects, including a large garrison. It is the terminus of one railway line and the starting point of another now under construction. It is therefore a place where the services of a European Assistant are necessary so long as the law stands as it does. At present I have no European Assistant, the District Munsif, who is a European British subject, having been, as a special case, invested with the powers of a Justice of Peace and First-class Magistrate. But there are many districts supplied with a European Assistant, in which charges against European British subjects are likely to be less frequent than here.

17. In a question of this sort, opportuneness is a matter of importance. Such a change in the law as is proposed should, in my opinion, work satisfactorily only where there is considerable social fusion between the races. Such fusion does not now exist here, and the carrying of this Bill is not likely, I think, to further its expansion. For a considerable time to come, it would I am sure retard it.

18. The Bill confines Government in its selection to certain classes. I would note that its provisions would preclude an arrangement which has been here found convenient, and under which the District Munsif (a European British subject) has been invested with powers as a Magistrate and Justice of Peace.

It would seem inadvisable to limit the extent to which Government may appoint European British subjects to try members of their own class.

19. I have referred at the commencement of this letter to the definition of a European British subject in the Criminal Procedure Code. That definition includes as grandchildren of Europeans many persons who have little claim to such distinctive habits and modes of thought as require in this country a special tribunal for the trial of their possessor. Such persons have been born in the country and have lived from their earliest years among natives, from whom they are often distinguishable by little else than dress. It seems to me that such persons may fairly be made amenable to the Courts of the Native Magistracy which is competent to deal with them, and that, if this were done, the number of cases against European British subjects would be so small as to reduce the administrative inconvenience in the provision of a special tribunal to a minimum.

20. I would exclude from the definition all grandchildren of Europeans, who might have been from their birth domiciled and educated in India.

From the Hon. A. SASHIAH SASTRI, C.S.I., to the CHIEF SECRETARY TO GOVERNMENT, dated Pudukóta, 1st June 1883.

IN obedience to G.O. dated 2nd April 1883, No. 937, Judicial Department, I have the honour to submit the following observations, on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of

jurisdiction over European British subjects. In doing so, I beg that the delay which has unavoidably occurred, may be overlooked.

2. The vicissitudes of the English power in this country have been many, and have from time to time necessitated abnormal arrangements for the administration of justice, civil and criminal, where European British subjects were concerned. These arrangements from their very nature could not and have not lasted immutably for ever.

3. In less than two centuries and three quarters, which is but a short space in the history of empires, commercial factories became Presidency Towns, Presidency Towns grew into Presidency Kingdoms, and Presidency Kingdoms became in their turn component parts of a vast united empire under one Empress. The Judicial machinery for the trial of European British subjects underwent corresponding changes. By the Charters of 1661 and 1669 the Governors with their Councils of Madras, Bengal, and Bombay, were constituted Courts of "Oyer and Terminer," and their jurisdictions were fixed by the Charters of 1726 and 1753. These Governors' Courts gave way to the Supreme Court at Fort William in 1774 and Recorders' Courts in Madras and Bombay in 1797, extending the jurisdiction over all British subjects in all the Provinces. These two last gave place to the Supreme Court in 1801 at Madras and in 1823 in Bombay. As new territories were acquired by the Company, the jurisdiction of these courts was enlarged. To provide for offences committed by British subjects at a distance, Justices of Peace were appointed at first by the Governor-General and afterwards by the several Governors and Lieutenant-Governors from among the covenanted servants of the East India Company or other British inhabitants. The jurisdiction of the Supreme Courts passed to the present High Courts in 1862, 1865 and 1866, under statutes of Parliament, and natives were declared eligible to the Benches of those Courts. Under these statutory changes, procedure also has changed from time to time. Thus in 1812, Zillah Magistrates were empowered to fine up to Rs. 500, and imprison up to two months. In 1857, four Bills were brought into the Legislative Council with a sweeping clause rendering European British subjects liable to be tried by any magisterial tribunal of the country without distinction. This clause, however, was rejected by a majority in the Council. The mutiny came in 1858, and the subject was dropped. Act XXV. of 1861, left the jurisdiction untouched. Mr. Stephen's Bill of 1870-71, which passed as Act X. of 1872, extended the jurisdiction of British Magistrates and British Sessions Judges while leaving the disqualification of natives to try European British subjects untouched. This was followed by an amending Act in 1874. The question again came under discussion once more, and the law of Criminal Procedure was finally remodelled as Act X. of 1882, still leaving native disqualification to try European British subjects untouched.

4. During all these momentous changes, it cannot be denied that some privileges were lost at each step. But the most substantial privileges of the European British subjects have remained, and still remain unchanged, and constitute a most invidious distinction between the European British and native subjects—(a) a right of appeal from the lightest possible sentence of a magistrate to the Session Judge or to the High Court, and from the latter to the High Court is still reserved; (b) right of being tried by the High Court for all offences, for which one year's imprisonment is not considered adequate is still reserved; (c) right to be tried by a jury composed of his own countrymen to the extent of one-half is still reserved; (d) that palladium of the Englishmen's liberty—to wit, the Habeas Corpus Act—is still reserved to him.

5. All the change that is contemplated by the Bill of February 1883, now under consideration, is that, where the post of District Magistrate and of Sessions Judge are held by covenanted natives, such natives shall not by the mere reason of their race be debarred from exercising the jurisdiction over European British subjects, which their European brethren of the covenanted service exercise over them by virtue of their office.

6. It has been argued with some speciousness that throughout all the changes in the matter of jurisdiction, the right of being tried by our own countrymen was left untouched, and so long as that was so, they did not care to complain. But is it altogether so? Was not the appointment of natives as Justices of the Peace in the Presidency Towns so long ago as 40 years and then again that of natives to the Bench of the High Courts constituted under Royal Charter, direct

invasions of this right? If they were, have they been attended with any disastrous consequences such as are foreboded on the present occasion? What disasters have befallen in the adjoining colony of Ceylon where the natives of the island are not debarred from exercising criminal jurisdiction over European British subjects.

7. Special privileges originating under special circumstances and calculated to meet a given state of things must give way to the ordinary privileges of a citizen when the special circumstances which justified them have passed away. Common laws, common Courts, common jurisdiction, common procedure, common liberties, and common rights are but the legitimate outcome of common allegiance to one sovereign. The proposal involved in the present Bill is but one more step towards the consolidation of the Empire, and that consolidation will not be complete, till the perfect equality of all in the eye of the law is asserted and enforced, or, in other words, till Article 8, Chapter I., of the proposed Bill of 1857 finds its appropriate place in the Procedure Law of the land. That article was "no person whatever shall, by reason of place of birth or by reason of descent, be in any criminal proceeding whatever expected from the jurisdiction of any of the Criminal Courts," and Mr. Peacock (afterwards Sir Barnes Peacock) thus spoke on the subject: "This article would invest the courts of the country with jurisdiction over European British subjects. To him it appeared to be correct in principle, for he could not understand upon what ground it could be contended that any one class of persons should be exempt from the jurisdiction of those Courts. No Frenchman or German or Armenian or East Indian was exempt from their jurisdiction. European British subjects alone enjoyed that privilege; and the Council was aware that there were many cases in which, on account of the extreme inconvenience, expense and delay which must necessarily be caused by committing defendants for trial to the Supreme Courts for offences committed in distant parts of the country, offenders were frequently allowed to go unpunished. The inconvenience was not confined to prosecutors. It extended also to the witnesses, who were frequently interested in the proceedings. The article to which he referred would bring an offender, whatever his place of birth or whatever his descent, under the jurisdiction of the court within the local limits of which his offence might be committed." This *summum bonum* of impartial legislation may not be attainable quite yet, but it must be attained one day, and that cannot be very far; and when that time arrives I would not deprive the European British subject of his special privileges, but would legislate that his privilege in the matter of appeals, and in the matter of the Habeas Corpus Act be extended to all Her Majesty's subjects; for liberty of person is as dear to the native as it is to the Englishman, and there is no reason whatever why it should be held more sacred or be more jealously guarded in the one case than in the other.

8. The knell of all exclusive race-privileges has been unmistakeably sounded from time to time. It was sounded in 1833 when the British nation in Parliament assembled, most solemnly declared that every subject of Her Majesty may rise to the highest offices in the State without distinction of colour, caste, or creed. It was tolled again about 1834, when all European British subjects were declared liable to the ordinary *Civil* jurisdiction of the Company's Courts of every grade. It was again sounded when natives were appointed Justices of the Peace in all the Presidency Towns, and later on, when the Benches of the highest Courts in the land were thrown open to the natives, and again unmistakeably when the Civil Service was practically thrown open, both by competition and by nomination, to the natives of the country. The policy of the British Parliament has ever been onward, founded as it has ever been on that keen sense of equal laws, equal justice, and equal rights which is the real corner stone of the British Constitution, a constitution which stands so pre-eminently high in the estimate of the world. The voice of that august body never faltered when questions of such momentous interest came before it. Not all the "*fulmen brutum*" has made that body swerve to the right or to the left, and the whole of the civilized world has not failed to read written over the portals of that assembly "*Fiat justitia, ruat cælum.*"

9. In matters criminal, the present position of the Englishman in the mofussil, if truth must be told, is almost one of immunity from prosecution, for the prosecution of a European British subject is at present very heavily handicapped by the immense sacrifice of time and convenience to the pro-

secuting natives as well as to the witnesses. It is a notorious fact that in remote and unpeopled parts of the country, whither British enterprise and capital take them, they, not unoften, take the law into their own hands and frustrate all attempts to bring them to punishment, while the Englishman has no objection to take the law of a native in criminal matters at the hands of a Native Magistrate. Why should he shrink from the manly test of submitting to it himself when it comes to the native's turn to take the law of him? In *civil* matters the law makes no distinction between the European British subject and the native, and both have been freely taking the law of each other before the lowest Courts as well as the highest Courts without any disaster befalling either. Why, then, should there be in criminal matters any distinction? The substantive Criminal Law being the same for both, why should there be any distinction of race in the dispensers of justice to one of them?

10. I have carefully studied the petition of protest, and have searched in vain for a solid argument against the proposed alteration of jurisdiction. In place of argument, I find that that worst of prejudices, viz., race-prejudice, is substituted. The logic of prejudice will listen to no reason, and it was most painful to me to observe that the civilizing influence of a century have done so little to bring nearer together in sympathy the two races (originally of the same stock) whom Providence has placed side by side on the same soil as common subjects of one and the same Sovereign. Is not even this feeble ground of race-feeling cut away from under their feet when it is remembered that the definition of a British subject is a very comprehensive one, and which virtually excludes none born in Her Majesty's Colonies, a Hottentot, a Negro, a Cingalese, a Maori, a Canadian; anybody in Her Majesty's Colonies might attain to the status of a British subject, and be legally qualified to try a European British subject in India. Is a Hindu gentleman, nay, an Aryan brother, less worthy than any of the above?

11. Again, has not the character of the personnel of the Civil Service itself changed very much since the competition system? That service is no longer the close preserve of gentlemen, members of certain families almost hereditarily succeeding one another. It is now open to the son of the common hangman as it is to the scion of a noble family, and, in the ordinary course of things, the former might possibly preside at the latter's trial. Why should it then hurt the feelings of an Englishman to be tried by a scion of the Zamorin or the Maharaja of Benares? It would indeed be a very strange commentary on the advance of civilization in India and of English education in particular, if it be declared that the best of natives, the very cream of the intellectual aristocracy of India, who had received the best education available in the country and had gone to finish it in the English Universities, who had successfully competed with the children of England on her own soil and in her own schools, and competed again at the examinations for the service, obtained their covenants and came back to their country, saturated with English feelings and English thoughts and English loyalty, and, after returning, have served from the bottom-rung of the ladder and risen, after 18 or 20 years of spotless service, to the bench of a Magistrate or Sessions Judge; if men such as these are declared unfit to have the very limited criminal jurisdiction over European British subjects which their brethren of the service (it may be of inferior natural attainments or aptitude) are considered by virtue of their birth eligible to exercise. If it be said that the European civil servant qualifies himself by learning the languages, customs and manners of the natives to try the natives, why cannot the native civilian, who has mastered the language, customs, and manners of the Europeans to a much greater degree, be assumed to be equally fit to try the Europeans, safeguarded as the latter will still be by so many privileges already alluded to?

12. If all the arguments of the protest amount to no more than a prejudice arising from race-feeling, a mere antipathy of colour, a mere dislike engendered by habit and false notions, what were the results when such blind prejudices were brought face to face with reason and stern justice? Let history tell. How much money and blood did England spend in the emancipation of the negroes who were not the less hated on account of their colour? Was not the great American war of the confederated States against the Federals waged, so regardless of life or money, to declare the coloured man an equal in the eye of

the law to the white man? Are not the United States of America, perhaps the greatest and the most powerful empire on earth, an example where all nationalities are absorbed and moulded into one great nation for purposes of Government, and all men, be they Scotch, Irish, Swiss, French, German, or Spanish or Negro or Chinaman, live in peace under equal laws administered without reference to race or colour?

13. Far from apprehending any disaster to non-official Englishmen or British enterprise in India from the passing of the Bill, I am in hopes that it will have the effect of placing the administration of justice on a higher pedestal than at present; that it will be a mark of that confidence on Her Majesty's Native subject, which it is impossible to deny to him after the solemn declaration of 1883, and of the Queen's Proclamation of 1858, and that it will be of a piece with that general policy of the British administration which has been the characteristic of it from the very beginning. I am also in hopes that in a few years, when the agitation caused by unthinking men driven into phrensy for the moment shall have subsided, that the benefits of the proposed measure will be realised and acknowledged by the very class who now so vehemently oppose it, who, I trust, will find that they are saved a world of trouble, inconvenience, and expense, when they find a Native Magistrate at their very door as competent to dispose of criminal charges laid against them as one of their own countryman at a distance; and in some cases, one much more absolutely unbiassed than one of their countrymen when, as it often happens, European society is split up in factions from the influence of which neither the European Magistrate nor the European Sessions Judge could possibly keep aloof. I set much store on this feature of the question, and have no hesitation in saying that whatever occasional failure of justice might arise from the ignorance of the Native Magistrate of the customs and manners of Englishmen and Englishwomen, such failure will be more than compensated by his perfectly neutral attitude.

14. For these reasons, I am deliberately of opinion that the Bill should pass into law.

MINUTE by the RIGHT HON. THE PRESIDENT, dated 31st May 1883.

I do not believe that the passing into law of Mr. Ilbert's much abused Bill would cause one anna of British capital to be removed from India,—nay I feel persuaded that five years hence, the whole opposition to it would be forgotten, and that everything would go on as it has done for years.

2. What is meant by such phrases as those used by Mr. Logan about alienating the good-will of the European community? How could the European community remain permanently alienated from that Government whose existence and overwhelming strength alone make the presence of the European community in this country possible?

3. I agree with Mr. Stokes in considering that the much discussed measure is perfectly "innocuous." Half the clamour raised against it has proceeded from persons who do not know the law under which they are living, and who will read with surprise Mr. Webster's clear and telling exposition of that law.

4. It does not follow, however, that because a Bill is innocuous it ought to be passed.

5. To withdraw it altogether would be, as it seems to me, a grave political error, one of the gravest that has been made in the domestic politics of India for many years. To do so would be to give up to irresponsible people the government of a country, which should remain, where the law has placed it, in the hands of the Viceroy and his Council under the general superintendence of the Secretary of State and his Council.

6. When, however, this and other Governments were consulted, a year ago, they were not consulted about what has since been known as "Mr. Ilbert's Bill," but about a very different proposition.

7. Why should not the change be confined, as was proposed at that time, to covenanted native civilians only?

8. I daresay the Government of India had very good reasons for enlarging the scope of the suggested change; but these reasons cannot have been such as to demand *urgency*.

9. Would it not be wise to be satisfied with extending the proposed privileges to Covenanted Native Civilians? It is idle to maintain that they have not had far greater advantages than the nominated Native Civilians. In process of time we shall see whether the former are, as many think they will be, far superior in efficiency to the latter, or whether, on the other hand, these show themselves the equals of their more highly-educated brethren.

10. *Alors comme alors!* This is not a country in which it is well to take very long views. Let us make those changes based upon our experience here and elsewhere, which, we feel persuaded, will produce *pretty soon* good effects, and let us give all reasonable satisfaction to the reasonable wishes of the people as brought before us by their authoritative spokesmen, up and down the land; but let us not be led to move at all quicker than we otherwise should, with a view to *anticipate* demands which may some day be made, and which it will be for our successors to grant or refuse.

11. I have no sympathy nor, indeed, any toleration for the distinction which I see drawn in one of the papers read above between what is theoretically right and practically right. If a thing is practically wrong, it must be theoretically wrong,—the theory being based usually on imperfectly apprehended facts.

12. I hold, however, that we have sufficient facts at our command to be certain that the Covenanted Native Civilians will not abuse the powers to be entrusted to them, if the view which was taken by the majority of the Madras Government, in May 1882, finds favour with the Viceroy and his advisers. My personal impression is that the further changes suggested would do no sort of harm; but I should prefer to see one step made at a time.

13. I shall especially rejoice if this view is generally supported by my honorable colleagues, as I hope it may be, and if it enables the Madras Government to give, as it happily usually does give, after full discussion, an unanimous opinion.

31st May 1883.

(Signed) M. E. GRANT DUFF.

MINUTE by HIS EXCELLENCY the COMMANDER-IN-CHIEF, dated 4th June 1883.

WHEN the opinion of local Governments was asked a year ago, as to the advisability of amending the Criminal Procedure Code, I concurred in the views expressed by His Excellency the Governor, that "it is perhaps a pity" that a question was raised just now which affects so few people, but I see no "answer to the claim of Mr. Gupta, which is logically defensible."

* * * * *

"Very soon, if not immediately, the Covenanted Civilian of Native birth must be put on precisely the same footing as his European colleague."

2. It seemed to me to be a logical sequence to the acts of former Governments; and that it would be as unreasonable to deny to Native gentlemen of the *Covenanted* Civil Service the full privileges enjoyed by their British colleagues, as it would be to bestow on a Native of India a Lieutenants or Captain's Commission in Her Majesty's Indian Forces, and then to refuse him the right of commanding a mixed detachment of British and Native troops.

3. I had no intention of extending the concession to any but the few gentlemen (six or seven) who had qualified themselves by competition in England for the Civil Service of India; but I ought to have added at the time how opposed I had always been to the admission of Natives either to the *Covenanted* Civil Service, or to an equality with the Commissioned Officers of Her Majesty's Army.

4. By opening the *Covenanted* Civil Service to Natives, I felt that we were placing them in positions for which they are not yet fitted, morally or socially, however well they may be so by education; and that we were giving them power which some of their own countrymen and the European population of India, almost to a man, doubt their being able to exercise wisely and impartially.

5. As, however, no restrictions as to the offices which they could, or could not fill were imposed when Native gentlemen were invited to enter the *Covenanted* Civil Service, those who have competed successfully for that service ought not now, in my opinion, to be denied appointments or authority which they might reasonably have hoped for when they determined upon adopting

that service as a career. But, with the exception of the six or seven Native gentlemen above alluded to, I would confine the *Covenanted* Civil Service to Europeans, at any rate, for the present.

6. The salaries of the several grades of the Covenanted Civil Service were purposely fixed at high rates, in order to attract a superior class of well-educated English gentlemen to India. It is quite unnecessary to offer the same inducements to Native gentlemen. To them, service in India has no disadvantages, while those conversant with the relative expenses of a European and native official's life in this country will at once see how disproportionately large the pay of the Native Covenanted Civilian is. Taking into consideration the different conditions of life, we may safely estimate the income of the Indian member of the Covenanted Civil Service as at least double that of his European *confrère*.

7. By an Act of Parliament, passed in 1870, to give "additional facilities for the employment of Natives in the Civil Service of India," a certain number of Native gentlemen can be annually nominated to this service by local Governments, subject to the approval of the Government of India.

8. This, I submit, meets all that is now required.

9. These nominees belong to what might appropriately be termed the "Local Civil Service," and the scope of their employment might justly be limited to such offices as may be determined by the Government of India and the Secretary of State.

10. From this Local Civil Service any man who had proved himself exceptionally qualified might, with advantage, be chosen for positions of high trust and responsibility, without in any way admitting the rights of other members to similar preferment.

But so long as the Covenanted Civil Service is open to Natives, we must expect that those who enter it will not be satisfied if treated differently from their European colleagues, and that, as they become eligible, by length of service, for the higher appointments, difficulties will arise, of a nature even more embarrassing perhaps than the one we have now to deal with.

Indeed, the time is probably not so far distant when we shall have some clever and ambitious Native Member of the Civil Service being pushed forward as a candidate for the Lieutenant-Governorship of Bengal, the Punjab, or the North-West Provinces.

11. I am aware that many leading Statesmen at Home hold very different opinions, and consider that the Natives of this country should be placed on an equality with Europeans as regards their eligibility for employment, and be given their fair share of the higher appointments. There is, no doubt, much to be said in support of these views. Education has spread so rapidly during the last quarter of a century, and a certain class of Natives have proved themselves such apt scholars, that it would be difficult to convince any one, ignorant of the habits and customs of Native life in India, why they should not take their places in any service or department for which they may have been able to compete successfully. I quite feel this, and I fully agree that Natives should be gradually educated to take some active part in public affairs.

12. But there is a dangerous side to the question.

13. It is not to be expected that any class would be content with managing local boards and small municipalities. As they are encouraged to take their share in such minor responsibilities, they will, in time, claim a place and a voice in the government of the country. In theory, it seems impossible to object to this; but to those who have Indian experience the time seems far distant when Natives can be safely trusted with such power. Englishmen unacquainted with India and the Indians, and who are in favour of political and popular education, do not seem to give such matters a thought. Their anxiety apparently is to divest themselves of power, and to hand it over to a people who are not yet fit to be entrusted with it. This cannot but be detrimental to the interests of both England and India; and will certainly cause us to be despised by the very people we have conquered for not understanding how to govern them; with the result, perhaps, that we may have, some day, to fight for what we now possess.

14. It is a mistake to suppose that race-antagonism, which reached such a pitch during the Mutiny, has been gradually disappearing, as is often asserted. In the Army this may be the case, but there the constant intercourse of the

European officers with their men, and the sharing of dangers and hardships in common, have brought about a mutual feeling of good-will, which goes far to lessen the natural distrust of the two races towards each other. This combination of camaraderie and respect will, no doubt, last so long as nothing occurs to excite the religious, or, in some future time, the *political* feelings of the soldiery.

In out-of-the-way districts, where civilisation is still in its infancy, there is, to a certain extent, this same kindly feeling between Europeans and Natives, and the latter are much more inclined to accept the authority of the governing race than they are in the large centres of educational enlightenment.

15. This effect of education is unfortunate, but inevitable, and, with results so momentous, it surely behoves Government not to adopt a too progressive policy, without first feeling its way carefully and cautiously.

16. It must not be thought from this that I am against the education of Natives. Far from it. This must necessarily come to pass, and no one is more alive than I am to the great benefits which education will eventually bestow upon the people of this country. My great desire is that we should accurately appreciate the results of this education, and be careful not to attribute to Natives imaginary qualities, because they are capable of passing a difficult examination at an English University.

(Signed) FRED. ROBERTS.

Ootacamund,
4th June 1883.

MINUTE by the HONOURABLE H. E. SULLIVAN, dated 12th June 1883.

Every word of the Minute recorded by His Excellency the Commander-in-Chief has my entire concurrence.

(Signed) H. E. SULLIVAN.

12th June 1883.

No. 4.

From the CHIEF SECRETARY to the GOVERNMENT of FORT ST. GEORGE, Judicial Department, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

SIR,

Ootacamund, 27th June 1883.

IN continuation of my letter, dated 13th instant, No. 1,577, I am directed to forward three copies of the opinions of the Honourable the Chief Justice, Mr. Justice Kernan, Q.C., and Mr. Justice Kindersley, on the Bill to amend the Code of Criminal Procedure, 1882.

I have, &c.

(Signed) C. G. MASTER,
Chief Secretary.

ENCLOSURE REFERRED TO IN PRECEDING LETTER.

From the REGISTRAR of the HIGH COURT of JUDICATURE, Madras, Appellate Side, to the CHIEF SECRETARY to GOVERNMENT, dated 23rd June 1883, No. 2,068.

ABSTRACT.—Forwarding the opinions of the Honourable the Chief Justice, Mr. Justice Kernan, Q.C., and Mr. Justice Kindersley, on the Bill to amend the Code of Criminal Procedure, 1882; and stating that no opinions have as yet been received from Mr. Justice Innes and Mr. Justice Muttusami Aiyar.

OPINIONS.

It has been suggested that, in inviting the opinion of the Court on the provisions of the Bill, no more is expected of the Judges than that they should consider whether the Bill has been so drawn as to secure the objects exposed

in the statement which accompanies it. But I apprehend that we are invited to acquaint the Government of India with our views on the expediency of the changes in the administration of criminal justice which the Bill, if it became law, would effect.

2. So much has the Bill been discussed in this country and in England, in the Legislature and in the Press, in Councils of Chambers of Commerce and at Public Meetings, that the arguments for and against its several provisions must be familiar to the Government; and little that is novel can be added to the discussion.

3. Notwithstanding the exceptional legislation for European British subjects, it cannot be contended that, as a matter of constitutional law, any race is recognised as dominant in British India. It is immaterial to speculate whether, having regard to the pretexts under which the territories of the Empire were acquired, it would have been consistent with justice to treat them as a conquered dependency. Faithful to its declared purpose, the British Nation resolved that the claim of the Crown to sovereignty in India should rest on a nobler title. The key-note of the policy of British administration was never more truly touched than by Sir James Stephen in the debate on the Marriage Act, 1872:—"The real foundation on which the British power in this country stands is neither Military Force, as some persons cynically assert (though certainly Military Force is an indispensable condition of our power), nor even that affectionate sympathy of the native populations, in which, according to a more amiable, though not, I think, a truer view of the matter, some think our rule ought to rest. The real foundation of our rule will be found to be an inflexible adherence to broad principles of justice, common to all persons in all countries and all ages, and enforced with unflinching firmness in favour of, or against, every one who claims their benefit, or who presumes to violate them, no matter who he may be."

4. The aims of British administration in India are to secure the protection of life and property, the free development of trade and industry and liberty of conscience, and subserviently thereto to assure to all classes of Her Majesty's subjects in India equal privileges of citizenship. The principle of the proposed measure, in so far as it removes disqualification, is not novel. It is a leading principle of the policy of British Indian administration adopted by Parliament half a century ago and guaranteed to the people of India by the Royal Proclamation of 1858.

5. But while I recognise that the removal of the disqualification is in harmony with the principles of British administration, I am not forgetful that the application of our policy has been necessarily gradual. We have had to educate a people whose moral tone has been impaired by long subjection to arbitrary power; and from whom, in their own interest, we have for a season been compelled to withhold a full measure of constitutional freedom. The question, then, which must attend every further concession of liberty is whether or not the time has arrived when it can be made without imperilling ends demanding the first consideration of Government, the preservation of the peace, and the effectual and impartial administration of justice.

6. In the debate on the motion for the publication of the Bill, it was observed, "That the opposition to this Bill is, in reality, not so much an opposition to the particular measure as an opposition to the declared policy of Parliament about the admission of Natives to the Covenanted Civil Service."

With all deference, I am bound to express my doubt of the correctness of this opinion. The class directly affected by the introduction of Natives into its ranks is the Covenanted Civil Service. As a class, no men have, by public acts and private efforts, more loyally supported the national policy and encouraged their native fellow-subjects to prepare themselves for taking a share in Civil Administration. Of the unofficial class there are very many who have not fallen short of the official class in their endeavour to ameliorate the condition of the Natives and to promote higher education, though, as private men, their action is necessarily less conspicuous.

The opponents of the Bill entertain the opinion that a privilege, which they deem of importance to the peace of the Empire or a safeguard to the liberty and property of their class, is to be sacrificed to what they regard as the sentimental grievance of a few Native public servants.

This apprehension has actuated the opposition to the Bill, and it is necessary to consider whether and to what extent it is well founded.

7. I may observe that I do not regard the grievance of the Native Civil Servant as sentimental in the sense that the injury is so trivial that the law should not take account of it. To declare every Native-born subject incompetent to exercise jurisdiction over a particular class of his fellow-subjects creates a feeling of inferiority hurtful to the development of those moral qualities in which we assert our Native fellow-subjects are deficient, and which we profess to desire they should regain. To prohibit a Magistrate from the exercise of a jurisdiction which is enjoyed by other officials of his class implies distrust either of his ability or of his honesty, and when the ground of disqualification is merely race, the grievance is felt to a greater or less extent by every member of the race who is sensitive of its dignity. The argument that the law, out of regard for Native sentiment, confers on Natives certain personal privileges, and that, for the like reason, it should respect the privilege of the European British subject, is, I think, answered by the observation that the privileges conceded to the Natives do not exercise any injurious influence on Europeans.

Although it has not been experienced in Madras, the instances mentioned in the debate appear to me to prove an existing and increasing administrative difficulty, which justifies the Legislature in determining whether, and to what extent, the restriction on the exercise of jurisdiction by the Native Magistracy should be continued.

Unless it can be shown that the effectual administration of justice, or some consideration of hardly less importance, requires the restriction, it ought not to be maintained.

8. The opponents of the Bill assert that such considerations exist. They contend—

- (1) that the Native Magistrate, unacquainted with the habits and customs of Europeans, and, it may be, imperfectly acquainted with their language, is unable to arrive in the case of Europeans at a sound conclusion as to motive and intention, which enter largely into the constitution of criminal offences;
- (2) that the Native Magistrate is almost unconsciously liable to influences which might at times pervert his judgment in the case of Europeans;
- (3) that the multiplication of tribunals will afford increased opportunities to the malicious to drag before a Criminal Court a European planter or agent, at a time when his absence will entail serious injury to property, to meet unfounded charges based on perjured evidence which, owing to the isolation of his position, it is difficult for him to rebut; and
- (4) that the possession of the privilege confers a prestige on the European British subjects, and indirectly on every person of European descent, which enables him to act with greater boldness in the repression of civil tumult and to command co-operation on the occasion of any catastrophe.

9. To deal with the first of these objections. That, to a certain extent, persons otherwise qualified to take part in the administration of justice may be unfit to try foreigners is recognised in the provisions of the Code, which allow to Europeans and Americans the option of being tried by mixed juries or sets of assessors; and it may be argued that it is only a legitimate extension of this principle to require that, where the decision is left to a magistrate or a judge, a European or American should have a similar option to claim that such magistrate or judge should be a European or American.

It is one thing to presume that a number of jurors or assessors taken at random may be unfit to try a foreigner, and quite another to presume a like probability of unfitness in the case of a magistrate or judge whose constant business it is to investigate motives and ascertain intentions. The ground of the disqualification is unfitness, by reason of ignorance on the part of the Judge, of the language, habits of thought, and manners of the persons with whom he may have to deal. It should, therefore, attach to those officers only who are, for these reasons, presumably unfit to exercise jurisdiction. We do not presume such unfitness in the case of High Court Judges and Presidency Magistrates. I admit that in the case of the latter class the propinquity of the High Court, the influence of public opinion, and the publicity afforded by the Press, renders

error of judgment less probable and less dangerous than it would be in remote stations in the Mufassal. But the circumstance that no complaint has been made of their incapacity to administer justice to Europeans on the ground of race is an argument to which reference may fairly be made by the supporters of the Bill. It shows that a universal presumption against the fitness of Native Magistrates to exercise such jurisdiction would be unsound.

I am not aware that any complaint has been made of race incapacity in the Native Magistracy in the Mufassal in the case of foreigners who do not enjoy the privileges of European British subjects, and, although these cases may be rare, the jurisdiction has been exercised, I believe, with sufficient frequency to afford instances, if any could be produced.

Again, the determination of motive and intention are at times material in the adjudication of civil rights. During the 17 years that I have been a member of a High Court, I do not remember that on any occasion it has been alleged that a European British subject or any other person of foreign parentage has been prejudiced by reason of his nationality in the exercise by the Native judiciary of their civil judicial functions. In some instances transfers have been applied for on the ground that the Native Judge was unacquainted with the language and customs or personal law of the parties, and the High Court has allowed the validity of the grounds urged and acceded to the application.

It is important to notice what are the coercive or punitive powers which Natives as Civil Judges may, under the existing law, exercise in the case of European British subjects.

Any Civil Court to which the Civil Procedure Code applies (1) may prior to judgment hold a defendant to bail, and, in default of bail, commit him to prison for six months, Section 481; (2) may impose on a witness, whether a party to the suit or not, a fine of 500 rupees if he absconds or illegally refuses to produce a document or improperly departs from the Court House; (3) may in execution order the imprisonment of a defendant who fails to deliver moveable property specifically decreed or to return a wife, Section 259, or who disobeys a decree for specific performance or disobeys an injunction, Section 260; and (4) may in execution of decree order the arrest of a judgment-debtor and his detention in jail for six months.

A District Court and any other Court empowered under Section 360 may sentence an Insolvent debtor to imprisonment (of either description as defined in the Penal Code—G. C. Act) for any of the offences mentioned in Section 359. In the Madras Presidency all Subordinate Judges and District Munsifs were in 1877 empowered to exercise this jurisdiction.—G.O., October 17, 1877, No. 2473, Judicial.

Furthermore, in regard to the marriages of British subjects, a District Judge may pronounce a decree *nisi* annulling the marriage when the marriage has been celebrated in India, and a like decree for the dissolution of the marriage when the marriage has been solemnised or the marital offence has been committed in India. It will be remembered that Natives being members of the Covenanted Civil Service may be appointed District Judges.

Few cases present greater difficulties or call for the exercise by a Judge of a higher degree of discretion than cases in Insolvency and Matrimonial Causes.

10. The second objection also proceeds on a presumption of personal incapacity in the Judge.

Independence and firmness are even more requisite for the due administration of criminal than of civil justice. And it must be admitted that in these qualities many even intelligent and educated Natives are at present deficient. It is admitted by their own countrymen. In a dissent appended to the Report of the Madras Committee on Local Self-Government, signed by five out of the six Native members, it is argued that, with the reservation to the Collector of a purely consultative voice, Magisterial and Police Officers should be altogether excluded from the District and Taluk Boards, and the reason assigned is that "the people of this country are so timid that there is no possibility of their expressing these views freely when they see reason to think that such views may be opposed to the wishes of men in power."

It is fair to observe that the members of the Boards would be generally gentlemen who have not received the training of Judges, and who would exercise functions provoking a sense of responsibility less actively than the functions of a Judge.

Admitting the defect in the natural character with which every official who has endeavoured to sound Native opinion must be familiar, I am bound to testify that the instances have been rare in which I have seen reason to think the work of the Native judiciary has been marred by a want of independence. There are more grounds for apprehending a want of firmness, but, as Mr. Duthort has observed, it is more probable that this would exhibit itself in favour than to the prejudice of Europeans.

The class of whom I speak have, for the most part, not enjoyed superior educational advantages. Of the classes on whom it is proposed to enforce jurisdiction, some members have been educated at English Universities and English Inns of Court, have lived in English families, and mixed in English society. So greatly have they been affected by these influences that their countrymen regard them more or less as aliens. Others have enjoyed educational privileges in this country of no mean order. The Educational Department has been fortunate in securing Professors of liberal culture and marked independence of character, who have moulded the characters of their pupils. In every Presidency there are to be found officials educated under such influences who know well that frankness in the expression of opinion will secure them higher esteem than insincere politeness or servility, and who are actuated in the discharge of their duties by a keen sense of honour.

The wide circulation of an outspoken English Press has not been without its influence in the education of our native officials, and the association with Europeans in higher judicial and administrative functions has resulted, and will result, in encouraging independence of thought.

Endeavouring to form a fair judgment between the sincere apprehensions of my countrymen on the one hand, and the qualifications of Natives on the other, I am constrained to express my conviction that there are classes of Natives to whom the exercise of jurisdiction over any class of their fellow-subjects cannot be refused on the ground of fitness.

11. *As to the third objection—*

It cannot be denied that a considerable per-centage of cases brought in the Criminal Courts are false or frivolous; and, as instances of the means to which occasionally resort is had to gratify malice or revenge, I may mention two cases which came before me. In one a father with his own consent was put to death by his sons that they might bring a false charge of murder against their enemy. In another a mother was murdered by her son, who had asked, but been refused, her consent, in order that he might lay a charge of the crime against the agent of his landlord. A planter or agent may well take account of the risk he runs when he lives alone among Natives, of whom even those who are friendly to him may misunderstand his speech or misconceive his motives. An accused person always labours under the disadvantage that, unless the Magistrate to whom a complaint is made at once detects that it is unfounded, process must issue and the attendance of the accused ordinarily be compelled. In some cases the supposed indignity to which he has been subjected by appearing in Court will satisfy the malice of his accuser; in others he may find a mass of evidence produced against him sufficiently based on undeniable circumstances to make his defence difficult and involve a lengthy detention from his business.

It is not unreasonable that he should desire that the criminal jurisdiction to which he is subjected should be exercised by officers in whose ability and impartiality he has confidence, and that a multiplication of tribunals should not offer temptations to the malicious to use a criminal process as a weapon of offence against him.

I should be much moved by these considerations if I were not satisfied that the extent of the danger has been magnified; for few, if any, new tribunals will be established in the planting districts, and, with the modifications and safe-guards I shall presently mention, any substantial danger apprehended from the Legislative proposals may, I think, be avoided.

12. *As to the fourth objection—*

Although the policy to which I have referred should be pursued in all sincerity, it must be admitted that the European British subject is in this country a member of a dominant race, and that, for some time to come, he must, in the interest of all races, enjoy some of the distinction attaching to a

dominant race. The privilege of the European British subject which the Bill assails is regarded as conferring prestige on the race and indirectly on all persons of European descent, and it has to be considered whether on the same ground on which other distinctions must be maintained it is not expedient that this distinction also should be preserved.

The President of the Committee on Local Self-Government (Madras) states, in his dissent to the Report, that since his first acquaintance with the country "there has been a gradual, but certain, decadence in the esteem of Natives for the European official," and he appears to regard this circumstance, as indeed it would be regarded by all who have at heart the interests of the Empire, with some apprehension. Others have asserted a like change of feeling towards unofficial Europeans.

There are well-known difficulties in gauging Native opinion, and it would be unsafe to form a conclusion as to the general attitude of the Natives from the language of the small number that profess to express Native opinion or come into frequent contact with Europeans. Changed circumstances have no doubt worked, and will work, changes in the grounds on which Native esteem is accorded to Europeans, official or unofficial. An intelligent fear may give place to intelligent appreciation; and the former feeling is more demonstrative in its expression of respect than the latter. When a nation is being educated to independence of thought, there will be found some who persuade themselves that an assumption of contempt for authority is the becoming utterance of a free citizen; when such men express their ideas in a foreign tongue they select exaggerated and high-flown terms, of which, in many cases, they are ignorant of the real import. Imperfect education encourages self-conceit without in all cases improving manners. I allow that the expression of race antipathy is more outspoken, but I should hesitate to admit that less respect is now felt for Europeans by Natives than it was formerly on the grounds on which we desire to conciliate their esteem, viz., the conviction that we regard truth and desire to do justice.

13. However that may be, I recognise to the full the expediency of securing to Europeans whatever prestige can be fairly accorded to them. India has not yet made sufficient progress towards self-government that internal tranquillity and the safety of life and property can be secured without maintaining the prestige of the dominant race. In the desire to devote the revenues of the country to the development of its resources and to the education of the people, we have reduced to a minimum the force organised for the repression of disorder. When religious or sectarian animosity has disturbed the peace of a large town, when an imperfectly civilised race has ravaged a country side, it has not unfrequently happened that troops or a sufficient body of Police has not at once been available. Europeans, official and unofficial, sometimes ill seconded by Native assistance even of the official classes, have disregarded consideration of personal danger and checked or repressed tumult. It is the prestige of the race that has rescued these acts of bravery from the reproach of foolhardiness, and has restrained the excited mob from overwhelming the representatives of public order. In one sense every European in India is a member of the garrison, or, as I prefer to say, of a body which has assumed the duty of rescuing and preserving India from anarchy, and it would be impolitic, in the interest of all races, that the prestige of the European should be impaired.

14. I confess that this consideration would have induced me to hesitate to recommend the introduction of the Bill. It has, however, been introduced, and in order to avoid a recurrence of the excitement which, if it were now withdrawn, its re-introduction within a few years would occasion, it has to be considered whether a modification of the proposal might not allay the apprehensions of those whose opposition to the measure proceeds on reasonable grounds.

My honorable colleague, Mr. Justice Kindersley, does not stand alone in objecting to the Bill on the ground that it is premature. There are many who do not question the principles of the Bill, who admit that a time may come when the Legislature need not hesitate to accept it. To my mind, there is much force in the argument that it is desirable to introduce the change proposed gradually; its gradual introduction will at first have little effect on the

prestige of the European British subject, and that effect will be counterbalanced by other political advantages.

15. In so far as the Bill proposes to enlarge the class eligible for the exercise of jurisdiction over European British subjects, I believe there is no ground for apprehension that the jurisdiction would be improperly exercised by the Native members of the Covenanted Civil Service selected by competition.

I have had no sufficient experience of the members of the Statutory Civil Service to form an opinion of their fitness for the exercise of the jurisdiction, and the rules under which they are selected do not, I think, afford a sufficient guarantee of such fitness.

When these gentlemen show themselves qualified to undertake the responsible office of Sessions Judge or Magistrate of the district, a judgment may be formed of their fitness to exercise jurisdiction over European British subjects.

16. As to Assistant Commissioners in the Non-Regulation Provinces and Cantonment Magistrates, I presume that the reason for specifying these classes was the repeal which the Bill proposes of so much of the existing law as confers on the Government a general power to appoint Europeans to be Justices of the Peace. I do not understand that it is proposed to appoint Natives to be Cantonment Magistrates. There are obvious reasons why it would be unadvisable to do so; and I consider that until a province of the Empire has made such progress that it can be brought under the general Regulations and Acts, the time has not arrived when jurisdiction over Europeans should be conferred on any Natives other than those who have entered the Civil Service by competition.

No one should be appointed a Justice of the Peace to exercise jurisdiction over Europeans in a Native State who is not a European British subject or Covenanted Civilian selected by competition. But it may be gathered from the opinions I have already expressed that I think there are Subordinate Judges and Deputy Collectors on whom the jurisdiction might safely be conferred to be exercised in the Regulation Provinces.

I am not aware on what ground, except that of uniformity, Europeans who do not belong to the classes mentioned in the Bill are to be rendered ineligible for the exercise of the jurisdiction. If fitness is, as I have throughout assumed it must be, regarded as the ground of qualification, the disqualification of this class is a contradiction of the principle of the Bill. Uniformity can be secured, so far as is desirable, by conceding the jurisdiction to such persons, European or Native, as are members of the Covenanted Civil Service selected by competition, or hold specified offices; and, subject to the restrictions I have mentioned, to such persons, European or Native, as may be selected by the Government on the recommendation of the High Court. I propose this limitation on selection by the Executive, because I know it cannot always resist the urgency of local authorities to confer powers, and because it can, in many instances, have little direct knowledge of the gentlemen recommended for powers. On the other hand, the greater number of the persons whom it would be desirable to select would be officers of whose judicial capacity the Judges of the High Court would have had experience.

My proposals amount to this: that in cantonments jurisdiction over European British subjects should be conferable only on European British subjects; that in Non-Regulation Provinces it should be conferable only on European British subjects and Covenanted Civilians selected by competition; and that in Regulation Provinces it should also be conferable on such Europeans and Natives as may be selected by the Government on the recommendation of the High Court.

17. In order to allay whatever apprehension is seriously entertained as to the fitness of the officers on whom jurisdiction would be conferred, I have considered whether it might not be desirable to give to every European British subject the same option in respect of the presiding Judge or Magistrate as he at present enjoys to a qualified extent in respect of jurors and assessors. I have come to the conclusion that it would be unbecoming the dignity of the judicial office that this option should rest with those who are subject to the jurisdiction; and that a safeguard reasonably sufficient might be provided by rendering more effectual a provision of the existing Code. The 526th section C.C.P. enacts that whenever it is made to appear that a fair and impartial inquiry cannot be

had in any Criminal Court, or that some question of law of unusual difficulty is likely to arise, the High Court may transfer a case to another Court or to itself. I would authorise the High Court to make the transfer if it is made to appear "that it is expedient for the ends of justice." And I would supply a defect in the Code by directing that in any case in which, prior to the commencement of the hearing, the Government, the complainant, or the accused, shall notify to the Court its or his intention to make an application under section 526, the Court shall adjourn the hearing for such reasonable time as may be required to enable an application to be made and an order obtained thereon.

18. Lastly, in the districts in which planting is principally carried out, there are now settled retired officers of the Army or Civil Service and other men of education and means who would in England be selected as Justices of the Peace. So far as it is possible magisterial powers should be conferred on these gentlemen to be exercised by them as members of benches and ordinarily under the presidency of a European Executive Officer of the district or a member of the Covenanted Civil Service selected by competition.

With the modifications and limitations indicated, I believe little valid objection could be taken to the proposed alteration of the law.

(Signed) CHARLES A. TURNER.

It is stated in "Objects and Reasons" that the Government have "decided" "to remove every disqualification which is based merely on race distinction." I presume, therefore, that the draft Bill is sent to the Judges to ask their opinion only on the question whether the proposed Bill will accomplish the object decided on.

In this view, I think the proposed Bill is legally suitable to the purpose of Government.

21st April 1883.

(Signed) J. KERNAN.

My opinion about this Bill is that it has been introduced too soon. I hope that in a few years the Natives will have made so much progress that they may safely be entrusted with jurisdiction over European British subjects. At present I do not think that the time has come for the change.

21st April 1883.

(Signed) J. R. KINDERSLEY.

From the CHIEF SECRETARY to the GOVERNMENT of MADRAS, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

No. 2108, dated 11th August 1883.

In continuation of my letter, dated 27th June 1883, No. 1710, and with reference to your telegram of the 27th ultimo, I am directed to forward a copy of the minute recorded by the Honourable Mr. Justice T. Muttasami Aiyar on the Criminal Procedure Bill.

(Signed) M. HAMMICK,
For Chief Secretary.

MINUTE by Honourable Mr. Justice T. MUTTASAMI AIYAR, Madras.

As a Native who has had criminal jurisdiction over European British subjects as a Presidency Magistrate from 1868 to 1872, and as a High Court Judge since 1878, I have felt some delicacy in expressing an opinion on the Jurisdiction Bill, which is opposed mainly on the ground that the several races other than European British subjects who are settled in India are, as a body, incompetent to exercise such jurisdiction. But, as a member of a Court to which Her Imperial Majesty has, under statutory enactment, been pleased to commit the highest judicial functions, I feel it at once due to the Crown and to my country to place on record my views on a legislative proposal which has evoked such widely different sentiments both in this country and in Europe. Divesting myself, so far as it is possible to do, of any conscious partiality, I

believe that the measure is one which the legislature may enact as law with the fullest assurance of its justice and without any reasonable doubt of its expediency. There is scarcely room to doubt that the principle on which the Bill is founded is sound and unimpeachable. Assuming for a moment that there are certain classes of Natives who are, by education, special knowledge and character, qualified to exercise the new jurisdiction, I am unable to conceive on what principle of justice it is to be withheld from them. Where are we to stop, if we once admit that, in a time of peace and progress, when the policy adopted in every branch of the administration is in the direction of the regeneration of India, the claims of equal justice to all classes of Her Imperial Majesty's subjects are to be subordinated to the sentimental objections of any one class? Nearly 50 years ago, and in 1833, it was decided by the British Parliament that no Native shall be excluded from any office in the State which he is competent to hold solely by reason of his colour, castè, or creed; and the Jurisdiction Bill only purports to give effect to this Parliamentary guarantee by substantially ruling that no power appertaining to the office which the Native is qualified to hold shall be taken away from him because he is a Native and not an European British subject. The time that has been allowed to elapse from the date of the Parliamentary guarantee, during which English education, English administration and liberal-minded Englishmen and Englishwomen have steadily been doing their good work in aid of progress, indicates that the legislation now proposed is far from premature. On the other hand, it is the necessary result of that liberal policy and statesmanship which does not shrink from recognising the altered conditions of progress, which has made Great Britain what she is, and which, it is earnestly hoped, will one day raise India to what she ought to be. I further think that, in this country, where there are divers races and nationalities, the only considerations that ought to influence our decision is that of competency to exercise the new jurisdiction. I do not for a moment pretend to claim this jurisdiction for all Natives, for no one is more aware than I am of their many imperfections; but I desire to point out that there is a considerable number of Natives who are competent to exercise the criminal jurisdiction as efficiently as the average European British subject, and that it is as incorrect to say that no Native is competent to exercise it as it is that every European British subject is competent to exercise it.

2. Confining myself, then, to the question of competency, I do not see sufficient ground for the apprehension that the Bill, if it becomes law, will at all impair the protection which European British subjects claim against injustice. Our Subordinate Judges, who are Natives, exercise unlimited jurisdiction over the property of European British subjects, and it is generally admitted that they exercise it as satisfactorily as most of our District Judges. Again, our District Munsifs have civil jurisdiction to no inconsiderable extent over European British subjects, and there has been no complaint against them. The coercive and punitive powers which are conferred upon the Native Judicatories by the provisions of the Code of Civil Procedure include powers to arrest, to imprison, to fine and to demand security from European British subjects; larger in extent, in some cases, than the power to fine or imprison, which it is now intended to confer upon Justices of the Peace; and, so far as I am aware, there has not been a single instance in this Presidency in which these powers have been abused to the prejudice of the European British subject. Notwithstanding the fact that civil justice is so largely administered by Native agency, no sense of insecurity of property has resulted from it. On the other hand there has been a steady and copious flow of British capital into India during the last 20 years. This being so, I do not understand why should the very limited criminal jurisdiction which it is now proposed to confer upon a few superior Native Magistrates, who, as a class, are at least as intelligent and respectable as our Subordinate Judges, produce a different result. Is it not just and reasonable to conclude that the new criminal jurisdiction will be exercised by them as carefully and as impartially as the civil jurisdiction and its ancillary powers are exercised by their own countrymen in the uncovenanted judicial service? Turning, next, to the Native civil servants, are not there additional guarantees of efficiency in the university education which those Natives and Eurasians who are selected for the civil

service under the competitive system generally secure, in the common platform on which they compete in England with their English compeers, in the insight which they acquire into the influences that enter into the domestic and social life of Englishmen and Englishwomen, and in their modes of thought and feeling? Furthermore, the circumstances in which this jurisdiction will be exercised by Natives afford a very satisfactory guarantee against its abuse. The supervision which the District Magistrate, the Sessions Judge and the High Court exercise over the inferior Magistrates, the care with which their action is watched where an European British subject is concerned, the feeling among educated Natives that even a *bonâ fide* mistake in a case where an European British subject is concerned, or in which party-feeling runs high, is liable to misconstruction, the desire to maintain a high character for judicial impartiality in the estimation of the higher European district officials and of the High Court and Government, the power of transferring cases which vests in the High Court, the facilities which the European officials in the provinces possess of discovering any abuse of power in cases in which an European British subject is concerned, the right of appeal, and the right to apply for the writ of *habeas corpus* which Englishmen possess—all these favour the conclusion that the superior Native officials named in the Bill will feel and recognize that it is as much their interest as it is their duty to exercise the new jurisdiction so as to merit the approbation of enlightened Europeans. As to Native Sessions Judges and District Magistrates, who will be men of considerable experience and of approved service, high official status and character, it seems to me to be absurd to say that, although they may well sustain the heavy responsibility devolving on them in all other respects, they are not fit to try a few Europeans who may offend against criminal law. As to the members of the statutory or Native civil service, it is, no doubt, true that though they are always men of high social status, and though many have secured the benefit of liberal English education, some of them may be young, inexperienced, and not as highly educated as the others; and all that can, perhaps, be reasonably demanded is that in their case the new jurisdiction should be specially conferred by Government subject to certain length of service and on special proof of fitness for its exercise. I may here refer to the success with which criminal jurisdiction is exercised in the provinces by Native Magistrates over Europeans who are not European British subjects. In what respects do English British subjects differ from other Europeans so as to render the extension of jurisdiction inexpedient? If it is the right of conquest, I would observe that British love of equal justice to all is as important an element of British greatness as British valour or British pride. These considerations induce me to think that the opposition offered to the Bill is not founded on reason.

3. In the discussion which the legislative proposal has evoked, many secondary issues have unfortunately been raised, and the main issue has often been thrown quite into the background. It is said by the opponents of the Bill that what we ask for is, not that any privilege enjoyed by the Native should be withheld from him, but that the privilege hitherto enjoyed by the European British subject should not be taken away from him. I would here observe that the real question is one of equal justice to all Her Majesty's subjects, and of removing legal disabilities when the altered conditions of progress render their removal an act of bare justice and fairness. The principles and traditions of enlightened statesmanship and legislation seem to me to require in this country that no special privileges that derogate from the equal rights of citizenship should be recognized, except either on the ground that the particular privilege claimed must be tolerated for a time on considerations of policy as an unavoidable administrative imperfection, or for the reason that its preservation is necessary as a special protection against injustice.

4. It is next urged that the Native community does not demand a repeal of the privilege which is dealt with by the Bill. I would ask whether, as a community, Natives ever demanded that slavery should be abolished, or that no arbitrary distinction of colour, caste or rank should be recognized regarding the exercise of public rights, or that the Indian prince and peasant should be equal in the eye of law and in the British Courts of Justice. I would further ask whether it is reasonable to believe that the Natives do not see and feel the humiliation implied by a legislative declaration of national and almost universal

incompetency to exercise jurisdiction even in small criminal cases over European British subjects.

5. It is further alleged that some of the Natives say that it would be troublesome to exercise this jurisdiction, and that they would be better off without it. Does not this really imply a diffidence in the impartial judgment of their official superior when he has to decide between an Englishman and a Native subordinate? In many cases, this diffidence will, on inquiry, be found to rest on no solid foundation. Assuming that there are some cases in which it is well founded, is it not an administrative defect that ought to be remedied? Is this feeling to be encouraged or to be noted as an argument against the Bill? Does it not, on the contrary, indicate that scrupulous care would be taken in exercising this jurisdiction, and that European British subjects are likely to receive more consideration from Natives than they might reasonably expect from their own countrymen?

6. It is not for me to enter on the question of feeling or of sentiment, and I would therefore pass over it with the remark that it does not harmonise with the exigencies of progress and with the British sense of fairness and justice. I may, however, state that, if the Bill becomes law it will tend, though after a time and after the present excitement passes away, rather to bridge over the gulf between the European and the Native which invidious distinctions maintain, than to widen or deepen the breach.

7. It is next urged that exemption from Native jurisdiction is of political importance, and that it is necessary to maintain the prestige of British power. Her Majesty's Secretary of State is often a party in a civil suit tried by a District Munsif, and at times in a judgment passed against him not only by the Court of first instance but also by the Court of Subordinate Judge on appeal. The whole Native community is aware of the existence of this right to sue the Crown. I would now ask whether this knowledge, and whether the gracious submission of the Crown to Native jurisdiction, have lowered or raised the prestige of British power. I may say, without fear of contradiction, that it has deepened the loyalty and affection felt for our Most Gracious Sovereign, and materially added to the prestige and splendour of British power. It is, therefore, not easy for me to understand why British prestige should suffer if Her Majesty's Native servant, acting in subordination to Her Majesty's Government and subject to the authority of Her Majesty's High Court, should punish an European who breaks the law.

The submission of the Crown to Native jurisdiction in civil cases most emphatically illustrates the position that love of equal justice to all materially adds to, and does not at all detract from, the prestige of the British race, and that it has always characterised the British rule in this country.

8. As to the argument that immunity from the jurisdiction of Native Criminal Courts constituted by the British Government and supervised by higher European tribunals is the personal and indefeasible privilege of the European British subject, I must say that it is inconsistent with the traditions of the British rule and the history of British legislation in this country for nearly 50 years. For instance, prior to 1836, European British subjects had enjoyed a total immunity from the civil jurisdiction of all the Courts established by the late East India Company. Then there was a sentiment that even English gentlemen, including the Judges of the late Sadr Court, were unfit to exercise jurisdiction over Europeans. But when it was found that there was no necessity for the retention of this privilege, and that an amendment of the law was feasible, Act XI. of 1836 was passed to repeal the privilege. When this was done, no distinction was made between the Native Judge and the District Judge. Although District Munsifs were not then included among the judicatories competent to exercise civil jurisdiction, still the ground was one of incompetency and not of nationality. However, when the improvement of the uncovenanted judicial service rendered a further amendment of the law practicable, Act III. of 1850 subjected European British subjects to the civil jurisdiction of District Munsifs. Again, when it was found expedient to confer criminal jurisdiction on Native Magistrates in Presidency towns over European British subjects, the law was amended without any opposition. As to this, it is

stated that the presence of a large European community and of the English Press in Presidency towns are special safeguards which do not exist in the provinces. Assuming that it is from fear, and not from principle or sense of duty, that Presidency Magistrates do not abuse their power, or the supervision of the High Courts, the facilities which district officials possess of acquiring information as to how an European British subject is treated, and the criticisms and letters that appear in the Presidency papers as to what takes place in remote plantations—are all these to go for nothing as checks against abuse of power?

9. As to the argument founded on international law, according to which Christian nations in Europe claim immunity from the criminal jurisdiction of Muhammadan States in Turkey and Northern Africa, it rests, as pointed out by Sir A. Hobhouse, on grounds which are not applicable to the Jurisdiction Bill. It has, then, been suggested that an immunity from the Criminal Courts in the Native States of Travancore and Mysore is enjoyed by European British subjects. Neither does this seem to me to be a parallel case. The British Government is not entitled to insist that the Indian Penal Code shall always be the criminal law to be administered by those States. Nor is it in a position to guide and control the nomination and dismissal of Native Magistrates or to subject them to the supervision of higher European tribunals, or to institute administrative guarantees to ensure the protection which the special immunity is designed to secure.

10. The real question, therefore, on which our decision should depend is, I say again, whether, regard being had to the education and status of superior Native Magistrates and of Native civil servants, and to the circumstances in which they are to exercise a very limited criminal jurisdiction, the retention of the special privilege is necessary as a safeguard to the administration of criminal justice. I shall next proceed to consider *seriatim* the arguments founded upon what are said to be defects in Native character or peculiarities of temper in certain uneducated classes of Europeans, and upon the consideration which is due to English ladies that appear before judicial tribunals.

11. Want of sufficient firmness and of independence of character, and a proneness to be swayed by race sentiment or feeling, especially when waves of social and political excitement pass over Native society, are the defects to which reference has been made in connexion with the Bill. As to firmness and independence, they are seldom missed in the judgments of our subordinate Judges and District Munsifs, and it was a marked improvement in this respect that induced the legislature to give them jurisdiction over suits to which Government and superior public servants were parties. I have heard public and social questions discussed at social gatherings as well by educated as by orthodox Hindus, and I have seldom missed either a frank expression of opinion or firm adherence to one's views. If servility and obsequiousness are in some cases found in ministerial officials, it is because they feel that these are conducive to their success in official life. If they are at times found to feign a concurrence in the views of their European superiors, it will be seen on close examination that it is due to the fear that independence in a Native is mistaken for self-assertion, and that manner is similarly mistaken for character owing to the limited social intercourse between the European and the Native. However this may be, the defect does not exist where there is a conviction that independence and frankness are invited and encouraged, or where a high sense of duty is generated and sustained by the influences due to liberal English education. Considering, then, the status, the education and the enlightenment generally of Natives who are superior Magistrates and members of the civil service, and considering also in what esteem such men as the late lamented Ratnavelu Chetti and others of his stamp were held, I do not think that this objection against the Bill has any force.

12. Next, as to proneness to be swayed by race-feeling and social prejudice. There are three classes of Native Magistrates on whom it is proposed to confer criminal jurisdiction. The argument is obviously not pertinent in the case of Eurasians who enter the civil service under the competitive examination. Nor is it pertinent in the case of superior Native Magistrates, who are men of educa-

tion and tried character, and possessed of considerable experience. Neither has it weight in the case of Natives who have risen above social prejudice, gone to England, studied and competed with Englishmen on their own soil, moved in their own society, at times dined at the same table, and in some instances even married Englishwomen. This class of civil servants, as well as those Natives who have had the benefit of university culture and education and have habitually cultivated a high sense of public duty, have no real reverence either for sacred monkeys or idols. It does seem to me to be a great hardship that these men should be told that, although they owe their position in the civil service to freedom from prejudice and narrow-minded views, and to the fact that, in most matters, they are influenced by English thought and feeling, they must be taken to be no better than some of their uneducated countrymen for the purposes of this Bill. As to the members of Native civil service, they are generally gentlemen by birth and status and education, and the conditions in which they will have to exercise the new jurisdiction are adequate checks against the misuse of their power. I must also point out that, defective as social education in this country is in many matters, reverence for law and judicial office is a trait in national character, and a dereliction of duty on the part of a Judge is, according to Hindu notion, one of the five great sins for which there is no atonement. I have also stated that there is no objection to instituting additional tests of competency in the case of this class of civil servants. In dealing with this argument, it is unfortunately overlooked by those who oppose the Bill that District Magistrates and the High Court will not hesitate to exercise their power to transfer cases from one Court to another whenever there is any apprehension on the ground of abnormal, social, or religious upheaval.

13. The next argument, that Native gentlemen will be wanting in consideration to English ladies who may appear before them, impliedly casts a very ungenerous and totally unfounded imputation on Native character. I hardly know a country in which there are fewer instances of insults offered to family women, both in public and private life. Conscious as I am of the profound respect with which English ladies are regarded by all classes of Hindus, and of the respectful affection and gratitude with which liberal-minded English ladies who labour to raise and elevate women in India are remembered, both by men and women in educated Hindu families, I must emphatically characterise this attack as a cruel and unjust imputation on Native gentlemen. Have not Natives common sense to see that there are special social usages in every nation? Are they not aware that there are several peculiar customs among themselves? Does the educated European insult Native women because their customs are peculiar? "Regard every lady who is not your wife as your mother" is the rule of etiquette current among gentlemen in Native society. It is also a matter for regret that strange and startling misconceptions exist among European gentlemen as to the real position which the Hindu wife and mother enjoy in respectable families. The deference that is shown to the mother in all families, the consideration and respect accorded to Native ladies in Hindu society at ceremonial and festive gatherings, and the influence the wife commands in the families of many educated Natives and in respectable orthodox families, are scarcely inferior to what would be found in English homes. I may, therefore, confidently submit that English ladies that may appear before superior Native Magistrates and Native civil servants will be treated at least with as much deference and consideration as they might expect from their own countrymen, and that, if any mistake is made in this respect, it will rather be on the side of too much, than of too little, consideration.

14. As to the peculiarities of temper in sailors, soldiers and the lower classes of Europeans, the answer is that these classes are most numerous in Presidency towns, and there has been no complaint against Presidency Magistrates.

15. Another argument against the Bill is that national and social peculiarities are elements of probability that require to be taken into account in criminal cases, and that Natives are deficient in this branch of special knowledge. The fact is that it is hardly needed in dealing with ordinary police cases, such as drunken outbreaks, assaults or the like. In more serious cases, the overt acts from which a criminal intent is inferred would generally be such as create no

difficulty in arriving at a finding as to intention. As to cases in which a special knowledge is necessary, why should it be assumed without adequate reason that an educated Native is not competent to acquire it, while an educated European, fresh from England, is supposed to be capable of acquiring the same knowledge as to Natives? Are not English education, acquaintance with English society, social intercourse with Englishmen and opportunities of consulting European superiors and colleagues in cases of exceptional difficulty, facilities which a Native Magistrate and civil servant may turn to account? Are not cases which arise under the mercantile law, or which require a knowledge of the intricate law of trusts and testamentary alienations, and are not actions even for breach of promise of marriage, dealt with by Natives in the exercise of civil jurisdiction? It should also be borne in mind that those cases, if any, in which peculiarly subtle influences relating to sexual relations enter are not likely to come before inferior Magistrates, and that, if they ever do come, they may be transferred to some higher tribunal for disposal.

In conclusion, I have to apologize for the length of this paper. I have also to apologize if I have unconsciously under-estimated the force of any objection taken to the Bill. It is far from my intention that any special privilege which is necessary as a protection against injustice should be taken away from the British residents in India; for no one feels more than I do that, among the various races who have ruled over this country, the British race is the nation to whom this country owes an everlasting debt of gratitude. The prestige of that race is of importance as well to the Hindu as to the European; for it is necessary to the cause of order, progress and national regeneration in India. My only desire is that the Native and the European should not, in their relations as fellow-citizens, overlook the exigencies of progress, but act with mutual considerations, so that their descent from the same stock in the far antiquity may become the watchword for mutual esteem, cordiality, love and brotherhood.

T. MUTTASAMI AIYAR.

No. 5.

From the CHIEF SECRETARY to the GOVERNMENT of BOMBAY,
Judicial Department, to the SECRETARY to the GOVERNMENT of
INDIA, Legislative Department.

No. 3232 of 1883.

SIR,

Bombay Castle, 14th May 1883.

I AM now directed to reply to your Letter No. 24-C. of 17th March last, which conveys the request of the Government of India to be furnished with the opinion of the Bombay Government and of the Judges of the High Court and of such persons as this Government may think fit to consult on the provisions of the Bill for amending the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

The Honourable the Acting Chief Justice of the High Court.
The Honourable Mr. Justice West.
The Honourable Mr. Justice Scott.
The Commissioner in Sind.
The Commissioner, N. D.
The Commissioner, C. D.
The Commissioner, S. D.
The Honourable the Advocate General.
The Remembrancer of Legal Affairs.
The Honourable Sir Jamsetji Jijibhoy, Bart.
The Honourable Badrudin Tyabji.
John Fleming, Esq., C.S.I.
Raghunáth Náráyan Khoté, Esq., C.I.E.
Ráo Bahádúr Mahádev Wásudev Barvé, C.I.E.
Khán Bahádúr Pestonji Jehángir, C.I.E.
Káshináth Trimbak Telang, Esq., Barrister-at-Law.
The Chamber of Commerce.
The Chairman of the Bombay Law Society.
The Chairman, Bombay Trades Association.

2. The opinions noted in the margin have been received and considered, and are forwarded for the information of the Government of India. Other opinions will be forwarded when received, but the Governor in Council has felt that the matter has now been so thoroughly discussed that he need no longer delay the submission of his own opinion.

NOTE.—Sections of the Code, &c., referred to in the letter are quoted in an Appendix.

3. The effect of the Bill is that, whereas at present no persons, other than European British subjects, can be vested with jurisdiction over such subjects, unless they be Judges of the High Courts or Magistrates of the Presidency towns, it is proposed that such jurisdiction shall be made exercisable—

- (1.) By all Native Sessions Judges and District Magistrates ;
- (2.) By such (a.) Native Members of the Service known as the Covenanted Civil Service, whether appointed by competition or nomination, (b.) Assistant Commissioners in Non-Regulation Provinces, and (c.) Cantonment Magistrates,—as may be found fit.

4. The objects of the change are understood to be—

- (1.) To remove the anomaly that Natives who are admitted to the Covenanted Civil Service, and held competent to discharge the highest judicial functions, should be held incompetent to exercise jurisdiction over Europeans outside the Presidency towns, and,
- (2.) To remove all distinctions of race in the determination of the Magistrates, other than District Magistrates; who can be vested with this jurisdiction.

5. As regards so much of the Bill as would give effect to the first object which the Governor in Council understands to apply solely to the case of Native Sessions Judges and District Magistrates, his Excellency is of opinion that it would be proper that the jurisdiction in question should be given to all Native Civilians who attain those responsible positions. An opinion of the Bombay Government to this effect was communicated in my Letter, No. 4622, of 28th July last, and to this opinion the present Government adheres for the following reasons :—

- (a.) Native District Magistrates when appointed, which will probably not be for several years, will be persons highly trusted and found fit to have European Assistants, and it would be anomalous and affronting to their self-respect that they should have less jurisdiction than their Assistants. The sorts and degrees of jurisdiction to be assigned to other Magisterial Officers of the mofussil are left to the discretion of Government according to its sense of what is best for the general public interests. But it is the obvious intention of the law that a District Magistrate should exercise *ex officio* the full magisterial function in all its branches. He is charged with responsibility for the peace of his district; his position is exceptional and conspicuous; and, if a Native, his duty in relation to Europeans will be discharged under moral guarantees for care and rectitude not inferior to those which operate in the case of Magistrates in the Presidency towns.
- (b.) Native Sessions Judges should have the jurisdiction, because, if fit for the ordinary duties of such high judicial office, they will, in the opinion of this Government, be competent to preside over the trial of Europeans, associated as they must be with assessors or jury, of whom not less than half will be Europeans if so desired by the person tried; and because it might often be very inconvenient to Government and a hardship to Europeans, and all persons concerned, that there should be no authority in a district with power to sentence a European British subject to more than three months' imprisonment.

6. Considering, however, that this estimate of the competency of Native Sessions Judges, however supported by the opinions of experienced European officials, is not yet shared by the general European public, the Governor in Council would add the recommendation that, in the event of the jurisdiction being given to Native Sessions Judges, any European accused, whether brought before a European or Native Sessions Judge, should have the right to be tried by jury, even though the jury system may not have been extended by Government to the district in which the trial is held. In the mofussil a jury must be composed of an uneven number, not more than nine nor less than three; a European accused may claim that at least half, which must be more than half, shall be Europeans; the verdict proceeds from the majority, and the Sessions Judge, if differing, can only refer the case to the High Court. Should the Sessions Judge concur with the majority and pass sentence, the alleged severity of such sentence can still be appealed against to the High Court as if it were a point of law.

The law provides for many distinctions in the procedure applicable to Europeans and Natives; but there is no matter in which Europeans by virtue of their national customs could claim a distinction more reasonably than that of trial by jury. The distinction would also be in harmony with the existing law which enables the Government to introduce the jury system in such districts and for the trial of such particular class of cases as it thinks proper. Under the late Code of Criminal Procedure (Act X. of 1872) Europeans not being British subjects actually possessed the right which, it is now suggested, should be conferred on all Europeans, whether British subjects or not.

With the safeguards which the jury system affords, no reasonable objection could be taken by Europeans to trial by Native Sessions Judges.

7. As regards so much of the Bill as would give effect to the second object, the Governor in Council is of opinion that the time has not arrived when all race distinction should be eliminated from magisterial qualification.

As a preliminary observation, his Excellency would submit that the total removal of race distinction appears to be impossible unless the Government either submits to a great restriction of their present practice in the matter of appointing Europeans to be Justices of the Peace in the mofussil, or extends the qualification for receiving such office to Native Magistrates occupying many positions besides those mentioned in the Bill.

Political Agents who have to try Europeans committing offences in Native States can be made Justices of the Peace under the separate provisions of section 6 of the Foreign Jurisdiction and Extradition Act of 1879, but as regards British territory outside the Presidency towns, the Bill as it stands would debar the Government from appointing any European to be a Justice of the Peace unless he happened to be a member of the Covenanted Civil Service, an Assistant Commissioner, or a Cantonment Magistrate. But the necessities of our administration have hitherto from time to time required that the office should be conferred on Europeans filling many other positions, as, for instance, officers of the Staff Corps or Uncovenanted Service employed as Railway or City Magistrates and Medical Officers superintending sanatoria. Officers again are made Justices of the Peace for purposes other than the trial of Europeans, as, for instance, Military Officers for attesting enlistments, and Commissioners or Deputy Commissioners of Customs for adjudicating on goods liable to confiscation (section 20 of Act XXIX. of 1857).

Again, the Act as it stands would debar Government from utilising the services of non-official Europeans as honorary Magistrates and Justices of the Peace for the control of their countrymen in particular localities. In this connexion the total abolition of race distinction could not be maintained unless the qualification were extended to every Native of British India who might be made a 1st Class Magistrate.

In the opinion of this Government no restriction whatever should be placed on the liberty of Government to utilise the services of European British subjects as Justices of the Peace at their discretion, and a distinction of race must at least continue to this extent that, while all European British subjects are qualified for the office, only those Natives can be qualified who fill certain specified positions.

8. Attention being next confined to the question of the particular positions which should entitle Natives to the qualification, the Governor in Council proceeds to remark that the question put to him last year was whether all Native members of the Covenanted Civil Service, or at least those who have attained the position of District Magistrate or Sessions Judge, should be entrusted with jurisdiction over Europeans. The Government were then of opinion that the jurisdiction should be given to those only who become District Magistrates or Sessions Judges. To this opinion (subject to the suggestion in paragraph 16, clause b) the Governor in Council adheres, and it follows that he would not extend the jurisdiction either to Native Assistant Commissioners in Non-Regulation Provinces, or to Cantonment Magistrates before whom moreover European soldiers and their wives are frequently brought. As no Native Officer of the Indian Army may sit on the Court-Martial of an English soldier, so should no Native be appointed a Cantonment Magistrate. In fact the instructions of the Secretary of State have hitherto been precise that only Military Officers are to be so appointed.

9. After the public discussion of the question that has taken place, the Governor in Council feels bound to state why he holds that the jurisdiction should not be extended to Native Magistrates other than District Magistrates, although he is averse from relying on any of the numerous reasons that have been put forward, about which there is difference of opinion not only between Natives and Europeans, but also among the Europeans themselves.

He conceives it to be indisputable that Government must recognise the fact of the unwillingness of Europeans to be tried by Native Magistrates, and the bad consequences that are almost certain to ensue if this unwillingness be ignored—consequences involving disorder in our Courts of Justice and constant revivals of ill-feeling between the two races.

10. So far as this unwillingness is based on the idea of race superiority it has not the sympathy of the Governor in Council, for no superiority is likely to be apparent when the European race is represented by a prisoner at the bar and the Native race by a highly educated and carefully chosen Magistrate. But the unwillingness is based also on the difference between the language, feelings, and social customs of the two races, and however much its reasonableness, even on this ground, may be disputed, the Governor in Council is certain that it is honestly believed to be reasonable by the majority of Europeans.

In answer to this consideration the public exponents of Native views have urged that, so far as the appreciating faculty is concerned, Native Magistrates are as competent to try Europeans as European Magistrates are to try Natives. The Governor in Council concurs in this remark. Such disadvantage as arises from the difference of race is common to both cases. Indeed, the Natives who learn English from their early youth, and increasingly adopt it for their own purposes, speak and understand English far better than most Englishmen speak and understand the vernaculars—and the inner life of Europeans is not more a sealed book to outside observers than that of Natives. But the distinction taken is this. The Natives are content to be tried by Europeans in spite of the difference of race, which becomes, in fact, a positive advantage in proportion as it is desirable that an adjudicator should be cut off from all the social connexions through which influences might reach his mind. The Europeans, on the other hand, unaffected by any compensatory considerations, dislike, as they have always and everywhere disliked, the idea of being tried by persons not of their own race.

11. Their feeling partakes of intelligible anxiety in the case of those, seldom to be found in this Presidency, who are isolated from the community of their fellow-countrymen. It is impossible to ignore the propensity of the common people in India to resort to the Criminal Courts for the attainment of their various objects, the facility with which false witnesses for any purpose can be hired in every town and village, and the encouragement that would probably be given to false charges as against Europeans, regarded as intruders on the land, by the fact that they could be brought before Native Magistrates. The Magistrate's impartiality would be an imperfect safeguard against the risk, and no safeguard against the annoyance to which the objects of such false charges would be exposed.

12. Their feeling again would naturally take an extreme form in relation to the trial of women. There is no point of contrast between Europeans and Natives so striking as the positions of consideration and disparagement assigned to women in their respective social systems. The apprehension that a European woman tried by a Native Magistrate might be treated with what would be regarded as inconsiderateness in European estimation cannot be put aside as wholly unreasonable. Nor could it be easily obviated by attention to the Magistrate's qualifications, because the highest educational attainments may co-exist with hereditary prepossessions.

Our laws of procedure, civil and criminal, deviate* from the strict principles of English law in consideration of Oriental sensitiveness on the subject of the appearance of women in Courts of Justice.

* Section 640 of Code of Civil Procedure.

13. The Governor in Council will next advert to the circumstance that Natives are now admitted to the ranks of the Covenanted Civil Service in the proportion of one in six; and to meet the argument that if it can be foreseen

that the time must come when it will be absolutely necessary to vest them with jurisdiction over Europeans, the change should be effected as gradually as possible, and a beginning should now be made, he would reply that administrative inconvenience may be undoubtedly incurred if the Native Sessions Judges are denied the jurisdiction, but the proportion of European Magistrates in the districts will always be so large that no necessity need be anticipated of the employment of any Native Civilian Magistrate in the trial of Europeans. In the 5th paragraph it has been shown that the position of a District Magistrate requires that he should be vested with the full magisterial function *ex officio*.

14. Due note has been taken of the fact that the proposal in the Bill is not that all Native Civilian Magistrates should have jurisdiction over Europeans, but that the Governments should have the power to vest them with such jurisdiction when specially qualified to exercise it, but the Governor in Council would submit in answer that the exercise by the Governments of their proposed discretion, whether in giving or withholding the jurisdiction, would be a difficult and invidious task, liable constantly to cause either dissatisfaction to Europeans or disappointment to Natives. It is probable that the discretion would be variously exercised by the Administrations of different Provinces, and by successive Administrations in the same Province. If on the whole it is very sparingly exercised, there will be a notable disparity between the effect of the new law and the pre-announcement of its principles. And in any case the whole change of law and practice effected would constitute so small a step towards the desired end of perfect equality of Natives and Europeans before the law that it is not worth while for the sake of it to offend the European community by depriving them of a statutory protection to which they attach the highest value.

15. The satisfaction that the change would afford to the Natives would, in the opinion of the Governor in Council, be insignificant in comparison with the pain it would cause to the Europeans. The real feelings of the Natives are not to be judged by the theoretical claims put forward in a heated controversy. Judging from the previous tone of the Native Press in articles dealing with every topic of constitutional opposition, the Governor in Council believes that their sense of propriety has not been offended by the fact that the Europeans, who fill so strange a place in their community, are brought under special rules of criminal procedure and a special jurisdiction. They have seen moreover how little jurisdiction over Europeans is allowed even to European Magistrates outside the Presidency towns, and the Governor in Council can hardly doubt that the Native Magistrates themselves have been glad to be excused the jurisdiction altogether.

16. The mere disability therefore of Natives in this matter is not one that the Governor in Council can regard in the light of a serious political grievance. But it remains to consider whether an exceptional arrangement by which justice to Europeans is secured in the interests of public order involves practical injustice to their Native fellow-subjects. His Excellency has given careful consideration to the allegations that have been advanced on this head by Native leaders in the present controversy. They appear to be only two in number :—

- (a.) The first is that, owing to the paucity of European Magistrates in the districts, Natives who suffer slight wrongs at the hands of Europeans experience such trouble in finding a magistrate qualified to entertain their complaints that they perforce forego redress, and the commission of similar wrongs is thereby encouraged. Those, however, who prefer this complaint are perhaps ignorant of Section 445 of the Code, which would enable the nearest Native Magistrate to take the same cognisance of an offence committed by a European as he could if committed by a Native, and also to issue process to compel his appearance, provided it be made returnable before a magistrate having jurisdiction to try the case. The trouble of afterwards appearing with witnesses before the trying magistrate would be common to both parties, and probably far more irksome to the European defendant than to the Native complainant; and the fact that he could be exposed to it through the instrumentality of a Native Magistrate appears as complete a precaution as the law could devise for

checking the impression that Europeans can commit petty wrongs on Natives with impunity.

- (b.) The second alleged ground of complaint is that European Magistrates are disposed to be unduly lenient to European offenders. Every case must be judged on its own merits, and the Governor in Council will give no general opinion on the justice of this complaint, but he considers that the feelings of the Natives on the subject are natural and entitled to sympathetic consideration. He considers also that it is desirable to place the true motives of our legislation beyond suspicion. In his opinion, however, the amendment which the law requires for the reasonable satisfaction of the Natives on this head is—not to allow the trial of Europeans by unaided Natives, but—to give District Magistrates and other controlling authority power to order that any case appearing to call for such procedure should be tried by a Native Magistrate and a European Magistrate associated on one Bench, with provision for reference to the High Court in the event of their differing as to the verdict or sentence.

The change of law suggested could be effected by a short and natural addition to paras. 15 and 16 of the present Code of Criminal Procedure which provide for the appointment of Benches of Magistrates.

17. The Native Magistrates to whom this limited jurisdiction might be given should be of a specified magisterial class, for instance the, 1st class, but not necessarily members of the Civil Service. In fact, in these recommendations no account is taken of the privileges of the Civil Service. If privileges are to be considered, there is no reason why the privileges of a few Native Civilians should outweigh those of the whole European community. Nor is there any gain in removing an invidious distinction between the powers of European and Native Civilian Magistrates by creating an equally, if not more, invidious distinction between Native Civilian Magistrates, of whom the great majority will owe their position to nomination, and the experienced men who are now filling the office of 1st Class Magistrate in the higher ranks of the Native Uncovenanted Service.

18. The recommendations of this Government then are (1) that District Magistrates and Sessions Judges should have the jurisdiction *ex officio*; (2) that Europeans brought for trial before any Sessions Judge should have the right to claim a jury; (3) that provision should be made for the trial of cases likely to excite race antagonism by a European and Native Magistrate associated on the same Bench. Before deciding to make these recommendations the Governor in Council submitted them as suggestions for the consideration of the Judges of the High Court and of the Advocate General and Legal Remembrancer. From the appended answers it will be seen that they have not received much support, but neither have any objections of weight been made against them, nor has any alternative proposal been suggested which the Governor in Council can prefer.

19. In the opinion of this Government, if the modifications of the Bill now proposed be regarded as no more than a compromise, it is one by which the Europeans will practically lose nothing and the Natives will gain. And if those authorities are correct who anticipate that it will not satisfy either party, the Governor in Council is confident that the dissatisfaction will be of the nature that subsides, whereas it is not likely that the adoption of an extreme course in either direction would be the final settlement of the dispute.

The following passage is extracted from the excellent speech lately made by the Sheriff of Bombay, Mr. Raghunáth Náráyan Khoté, C.I.E., at a meeting of Natives in the Town Hall:—“It has been in the anxious contemplation of
“ some people whether a medium course (and this is a fit case for a compromise)
“ is not possible—such as might meet the convenience of the administration
“ of criminal justice by the State—a course which, whilst it answered on the
“ one hand the objections raised by the European population, would remove
“ the disability of which the Natives could justly complain. Such a happy
“ compromise would prevent the heart-burning between the two races, which
“ is calculated to be daily increased if the present measure passed into law;
“ for whenever any case involving race prejudices arose, the sore would open
“ and keep festering.”

Attention is also requested to the appended opinions of Mr. R. N. Khoté, C.I.E., the Honourable Mr. Badrudin Tyabji, and Sir Jamsetji Jijibhoy, who are distinguished representatives of the Hindu, Musalman, and Pársi sections of the Bombay community.

20. The only technical argument that has been brought forward against the proposal to allow the Europeans a jury is that the cases tried, being such only as would properly carry sentences not exceeding one year's imprisonment, will be of a petty character not usually submitted to juries. But a jury in a mofussil Court is a very different thing from a jury in England, and may consist only of three persons.

21. The only proposals for the modification of the Bill that have been suggested by persons whom this Government has consulted, and which call for remark, are three :—

(a.) The first would simply extend the jurisdiction as *ex officio* to District Magistrates and Sessions Judges and go no farther. The opinion first given by this Government in July last was limited to this effect. But the great public interest that has since been taken in the question has led the Governor in Council now to regard the proposal as an incomplete satisfaction of the demands, whether of Natives or Europeans. There is reason to fear that it would be treated as a mere instalment in the settlement of the question. Moreover the additional provisions which the Governor in Council has ventured to suggest should in his opinion be passed as being just in themselves, irrespective of the exigencies of the present controversy.

(b.) The second proposal is that Native Magistrates of the 1st class should be declared competent to try European British subjects if they make no objection. This appears to be already possible at the discretion of the Magistrate under Section 454 of the present Code. A provision by which a European accused could actually elect between a Native and a European Judge would certainly have the advantage of testing the reality of the objection of Europeans to be tried by Natives. But, regarded as a compromise in a dispute which is mainly of sentimental importance, it can hardly be supposed that it would be satisfactory to the Natives to find that the exercise of jurisdiction by Native Magistrates had been transferred from the discretion of the Government to the discretion of European offenders. Also the proposal is open to the objection that it would enable an accused person to flatter his Judge.

(c.) The third proposal is a variation on the mixed-Bench proposal adopted by this Government; and is to the effect that Native Magistrates of the 1st class should have the jurisdiction subject to the right of the accused European to claim to be tried by a mixed Bench. It is open to the same objections as the proposal last mentioned.

22. Finally, the Governor in Council trusts it may be borne in mind that, so far as his opinions can have value from acquaintance with the feelings and interests of the people concerned, they must be taken as applicable solely to the Bombay Presidency. There is a great difference between the Natives of different parts of India, and this Government is in no position to judge how far and in what aspects the solution of the present question is of greater moment to Europeans circumstanced as they are in Bengal than to the Europeans of this Presidency. At the same time his Excellency desires to express the hope that Europeans in all parts of India would acknowledge the sufficiency of the modifications of the Bill above proposed to secure entire justice to themselves, and would approve the extension of equal guarantees for justice to their Native fellow-subjects.

I have, &c.
(Signed) C. GONNE,
Chief Secretary to
Government.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

EXTRACTS from the CODE OF CRIMINAL PROCEDURE, ACT X. OF 1882, and other LAWS referred to in letter to the GOVERNMENT OF INDIA, No. 3232 of the 14th May 1883.

Section 274 of Act X. of 1882 (paragraph 6).

274. In trials before the High Court the jury shall consist of nine persons. In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Section 307 of Act X. of 1882 (paragraph 6).

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

Section 418 of Act X. of 1882 (paragraph 6).

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Explanation.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Section 269 of Act X. of 1882 (paragraph 6).

269. The local government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

When the accused is charged at the same trial with several offences, of which some are and some are not triable by jury, he shall be tried by jury for all such offences.

Section 234 of Act X. of 1872 repealed (paragraph 6).

234. Criminal trials before the Court of Session, in which a European (not being a European British subject) or an American is the accused person, or one of the accused persons, shall be by jury.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European British subjects or not, or Americans, if such a jury can be procured:

Provided that, in any district in which the local government has not ordered that all trials before the Court of Session, or trials for all offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

*Section 6 of the Foreign Jurisdiction and Extradition Act, XXI. of 1879
(paragraph 7).*

6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

Section 640 of the Civil Procedure Code, Act X. of 1877 (paragraph 12).

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

Section 445 of Act X. of 1882 (paragraph 16, clause (a)).

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person :

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Section 454 of Act X. of 1882 (paragraph 21, clause (b)).

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

MINUTE by the ACTING CHIEF JUSTICE on the BILL to AMEND the CODE of CRIMINAL PROCEDURE, 1882, so far as it relates to the EXERCISE of JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

1. This Bill goes very much further than the measure which was apparently in contemplation when my colleagues and I were consulted by the Government of Bombay in May 1882. I then stated my views at some length in my minute dated the 5th July 1882, and I adhered to the opinions I then expressed.

Objecting as I did most strenuously to the limited measure then advocated, for the questions were so framed that it was not difficult to see in what manner it was wished that the questions should be answered, I need scarcely say that notwithstanding the light thrown upon the present Bill by the "Objects and Reasons," and by Mr. Ilbert's speech in the Legislative Council in introducing it on the 9th March 1883, the present Bill has my most unqualified disapproval.

2. Mr. Ilbert at the end of his speech said: "We propose to substitute
" for the disqualification arising from race a qualification depending on tried

“personal fitness.” That in my opinion contains a fallacy which goes to the root of the matter in dispute.

3. I deny that a Native Judge or Magistrate in the Mofussil, whether a Covenanted Civil Servant or not, is fit to try a European British subject. He is in my opinion quite incompetent, and his very presence on the Bench will most probably lead to an increase in the very common practice in this country, a practice according to my experience not by any means confined to the Mofussil, of bringing false charges upon suborned evidence against persons of a different race whom it may be desirable to injure or get rid of.

4. In the debate in the Legislative Council at Calcutta in March 1857, one of the Judges of the then Supreme Court, Sir A. Buller, said, and I think most wisely, that they were practical men living in a land full of anomalies which they must deal with practically. He said the Magistrates' Courts, though they gave the Natives far better justice than they ever had before, would give the European British subjects far worse justice than they had been used to. He did not think it was right to give poorer justice to the European British subjects to avoid anomaly if they could give them as good justice as before without hardship to the Natives. As to Native tribunals, he thought that the European British subjects were right in objecting to them on the additional ground of race antagonism.

The Chief Justice of Bengal, Sir James Colville, the very eminent and experienced Judge, who, until his death in 1880, delivered most of the more important judgments of the Lords of the Judicial Committee of the Privy Council in the appeals from India, supported him, and drew attention to the well-known habit prevailing among Natives in the Mofussil of endeavouring to get rid of rivals by deliberately framed false criminal charges supported by false evidence, and said that the combination of executive and judicial functions in the persons of the Magistrates prejudiced and biassed their minds and rendered the Magistrates' Courts in India very unsatisfactory tribunals. Sir Barnes Peacock, the Legal Member of Council, said that, though he had introduced the Bill, he would consider the arguments. No decision was ever taken on this question. The Mutiny broke out within two months with all its horrors, and race feeling rose to a fearful pitch. The Court of Directors withdrew the question from the Council, and it was resolved to continue the former system of having European British subjects tried solely by the Supreme Courts.

5. In 1859 there was another debate in the Legislative Council of India, which showed that Sir Barnes Peacock had been taught by the Mutiny the danger of carrying abstract principles to their logical conclusions in India without regard to consequences. Sir Barnes Peacock, probably the ablest, the weightiest, and most acute Judge that has ever sat on the Indian Bench, had inserted in the Code then under discussion a provision disabling Natives in the Mofussil from even committing European British subjects for trial. Mr. Harrington (a very experienced and able civilian) thought this unnecessary. He said he had never advocated the trial of European British subjects by Natives, but he thought that they might be allowed to commit, and he taunted Sir Barnes Peacock with having at first advocated the sweeping Bill of 1857 and having now gone to the opposite extreme. Sir Barnes Peacock replied that he had never committed himself to it, and that even if he had done so it was unfair of Mr. Harrington to remind him of it. After the Mutiny he claimed the right to change his mind and boldly avowed he had done so.

Sir Charles Jackson, a Judge of the Supreme Court at Calcutta, who had had considerable Indian experience, having been Advocate General of Bengal in 1848, whence in 1852 he was raised to be a Puisne Judge of the Supreme Court of Bombay and was changed back again to the Supreme Court at Calcutta in 1855 or 1856, agreed with Sir Barnes, pointed out the practical necessity of providing special tribunals for this particular class of persons, and showed the utter fallacy of arguing that, because Natives were allowed to act as Justices in Calcutta, and to commit Europeans, therefore it was practically safe to let them do so in the Mofussil.

The Criminal Procedure Code of 1861 (Act XXV. of 1861) was eventually passed, leaving criminal jurisdiction over European British subjects practically as it was before.

6. When the Criminal Procedure Code of 1872 was before the Legislative Council of India, Sir James FitzStephen and Sir John Strachey, with the other experienced men who made the settlement of 1872, had to decide whether it was worth while, for the sake of asserting the principle (if principle it be) that all covenanted civilians should be empowered to try Europeans when they become full-power Magistrates, to risk the explosion which would inevitably have ensued, and which would have done incalculable mischief. The strong practical intellects of Sir James FitzStephen and Sir John Strachey declined to run the risk to avoid this petty anomaly, and they knew thoroughly the strong practical objections which exist to entrusting the jurisdiction to Natives. Accordingly they informally proposed to the European community through the non-official members that, if they would consent to submit to the jurisdiction of the Magistrates' Courts and to the summary trials, they (Sir James FitzStephen, Sir John Strachey, and others) would agree that no Natives, not even covenanted civilians, should have power to try European British subjects.

The High Court of Bombay was consulted by Government on the subject, and in a minute drafted by Mr. Justice Green we all agreed to the proposal. The European community, to whom the proposals were informally made, assented, and the arrangement was embodied in the report of the Select Committee, and became law.

7. I quote the opinions of the above distinguished judicial and other authorities, as they support me in my opinion as to the danger to which Europeans in the Mofussil will be exposed if the Legislature allows them to be tried by Natives, and to show that I have very high authority for my opposition to the present unnecessary and in my opinion most dangerous measure, one which is calculated to imperil the liberties of the increasing numbers of Europeans who have settled and are settling in the Mofussil, and especially in the planting districts of Bengal, and along the slopes of the Himalayas to the confines of Cashmere.

8. Next it is to my mind quite impossible to suppose that a visit of two or three years to England is sufficient to enable a native of India to become sufficiently Europeanised in thought, and sufficiently acquainted with European manners and customs, to justify one with safety in entrusting him with the extremely difficult task of trying Europeans; whilst those Natives who have never left India are, many of them, men of high caste, saturated with caste prejudices, have never been brought into social contact with Europeans, and are all of them totally ignorant of our manners, customs, and habits of thought.

9. In the recent debate in the Legislative Council on the 9th March 1883 (I quote from the supplement to the *Gazette of India* of April 21st, 1883, pp. 820-821) the present Lieut.-Governor of Bengal said, "Ample and exhaustive as was the speech of my honourable and learned friend Mr. Evans, with a great deal of which I sympathised, there are a great many facts which I could bring forward to support his contention that there is no administrative difficulty in connection with the matter, and I should have been inclined to challenge more strongly than he did the competency of the Native to try European British subjects. But this is not the occasion on which I shall press those views . . . If it be the opinion of the Government of India that this is a case of temporary excitement which will soon die out, I am sure they are mistaken, for I feel that in the whole of my experience in India this is unmistakeably the strongest and most united and unanimous expression of opinion and of public discontent that I have ever known, and that the last state will be worse than the first. I could wish for myself that the Bill could be withdrawn, and I do so, not only for myself, but as expressing the opinion of a great many who have spoken to me on the subject, even though they support the principle of the Bill."

10. No one that I am aware of has ever disputed that false and malicious charges are frequently made in the Criminal Courts in India. In Civil cases, the Lords of the Judicial Committee of the Privy Council have in their judgments repeatedly complained of the great want of truth which characterizes much of the evidence which comes before them in the appeals from India. In the course of a judgment delivered in the High Court at Calcutta on the 30th August 1879, Sir Richard Garth, C.J., said: "No evidence here, whether

oral or documentary, is, as a rule, so reliable as it is in England." (*Sikhhu Chund v. Dulputty Sing*, Indian Law Rep. 5. Cal. 387.) And it is only a few years ago that a decision of a District Judge in this Presidency was appealed against to the High Court of Bombay on the ground that the Judge had refused to hear evidence of a custom alleged to exist in a part of Gujarāt that women went with child for a period of two years and upwards, the question turning upon the illegitimacy of a child born considerably more than nine months after the father's death. No doubt any amount of evidence would have been forthcoming in proof of the alleged custom.

When in Lucknow a few years ago I was told on very high authority that witnesses could be procured there for a few pice each to prove anything required, from a murder down to the most trumpery assault.

11. Then the presence of a Native Magistrate on the Mofussil Bench will in my opinion act as an encouragement to persons either on their own personal grounds or instigated and bribed by others to lay false informations against European gentlemen and ladies residing in the district, whilst, if the Magistrate were a European, they might, to some extent, hesitate to bring what they knew to be a false and malicious charge against an innocent person.

12. I have myself no practical knowledge of the Mofussil, never having resided in it for any length of time—but I can call in aid the assistance of those who know life in the Districts well, and on this point I cannot, I think, do better than quote a few words used by Sir Steuart Bayley (who is in favour of the Bill) in the debate last month in the Legislative Council at Calcutta: "But there is another aspect of the case of the opposition which I think deserves most attentive consideration, and this is the real danger in which the isolated European, living in the Mofussil, runs from having false cases trumped up against him. It is right that I should state publicly that this danger is a very real and very serious one, for probably no member of this Council has had the same experience as I have of the lives led by planters in the Mofussil. My own experience has given me a strong feeling on this matter, and any one who knows the extreme bitterness with which disputes about land are fought out in the Mofussil, and the unscrupulous methods to which recourse is had in conducting these disputes before the Court, methods to which a planter cannot have recourse, will understand how precarious his position may become, and how essential to him it is that the law should be well and wisely administered."

13. I cannot in the least admit that what some seem to think sufficient, viz., the supervision of the High Court, will be an adequate safeguard to the European planters, managers, and ladies scattered throughout the enormously wide districts of British India. Its action, when invoked, will be too late. The real injury will have been caused by the laying of the false information supported by false evidence, and by the hearing in the Magistrate's Court, long before the proceedings are ripe enough for an application to be made to the High Court.

14. In my Minute, dated the 5th July 1882, I pointed out what appeared to me to be the fallacy of arguing that, because in the Presidency towns Native Magistrates could try and sentence European British subjects, therefore it was practically safe to let them do so in the Mofussil. It has since been concisely said and in better language than my own—"How can Europeans object to Native Magistrates in the Mofussil and yet suffer them in the Presidency towns? The power and influence of the European community, the blaze of publicity, the Bar, the presence and powers of the High Court, are sufficient answers. Besides, the Presidency Magistrate's functions are strictly judicial, and the practice of deliberately attempting to ruin rivals or enemies by cunningly concocted false charges, which is still as common as ever in the Mofussil, is practically unknown in Calcutta."

15. In conclusion, I may be permitted to remark that in my Minute already referred to I stated my belief that the limited proposal then placed before my colleagues and myself would "cause a great outcry and discontent among Europeans in India."

That the present Bill has raised a perfect storm of discontent is apparent to all of us. I have already quoted the recent weighty words of the very experienced civilian, the present Lieutenant-Governor of Bengal, on that point.

And I must say that, although of course regretting, but scarcely wondering at the strong language used by some of the opponents to the present Bill, I am glad to see that this project of legislation which is so unfair and prejudicial to the interests of the European community has met with the almost universal disapproval of my fellow countrymen in India, who, far more than members of the purely official and executive class, can better realise the extreme danger to their liberties which this Bill will cause if it becomes law. It has roused race antagonism, which, it should be remembered, must always exist in a more or less degree in this country as long as England holds it, which of course she always will. The Bill in my opinion can do little, if any, practical good. It has exasperated Europeans throughout the length and breadth of India in the highest degree, is destroying the cordial relations and good feeling which have hitherto existed between Europeans and Natives, and ought in my opinion to be at once withdrawn before any further mischief is done.

16. The modified scheme put forward in the letter from the Chief Secretary to the Government of Bombay, dated the 17th April 1883, I strongly object to, as I entertain the decided opinion that no Native should be allowed to have jurisdiction to try European British subjects in the Mofussil.

The High Court, Bombay, (Signed) LYTTELTON H. BAYLEY.
5th May 1883.

MINUTE by the HON. MR. JUSTICE WEST on the BILL to amend the CODE of CRIMINAL PROCEDURE, 1882, so far as it relates to the EXERCISE of JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

THE proposal on which the opinion of the High Court was taken last year was one for placing all members of the Covenanted Civil Service, whether Native or European, on the same footing with respect to their jurisdiction as Magistrates and Judges over Europeans accused of offences. We all supported that proposal with the exception of Mr. Justice Bayley. That learned Judge (now Acting Chief Justice), as his present Minute informs us, was from the first strongly opposed to the policy on this subject of the Government of India, which, within the proposed limits, his colleagues thought just and wise and logically necessary.

In this division of opinions I cannot forbear from giving expression to my great regret that the Chief Justice, who last year gave the policy of the Government of India his unqualified support, should not have put on record his views as to the measure now submitted for consideration. It is one of capital importance, and one on which his colleagues would have greatly desired to have the guidance of his ability and public spirit. The delay that has occurred has prevented Mr. Justice Kimball, I understand, from recording his opinion, which from his experience and moderation of character would have been of great value.

The Bill as it has been framed goes to lengths, I think, for which none of us were prepared, and it has been brought forward in a way which but few of us would think discreet. The "turbulent pride" of my own countrymen and the "sensitive vanity" of Natives offended by that turbulence, on which I dwelt in my few remarks of last June, have both been manifested in a way which shows what important factors these characteristics are in the problem of Indian Government. After what has passed retreat is almost as hazardous as an advance on the part of the Indian legislature. Angry passions and race antipathies have been stirred up in a way that I have not witnessed since the dreadful days of the Mutiny, and local legislation, however just and beneficent in its purposes and principles, will be carried on with the same risks as electrical experiments in the midst of a thunder cloud.

At the same time I think it impossible that there should now be any yielding of principle. The Government of India cannot afford to be hectored by any noisy section of its subjects: the lesson would be too soon and too fatally learned by every class in every district that it rules. The matter would, I believe, be best dealt with by withdrawing it altogether from the heated and unwholesome air of Indian politics and making it the subject of an imperial

statute. This might readily be cast in a form which, while completely effective, would call forth but little or no opposition. In India it is impossible now, I fear, to frame any Act that will not excite vehement complaints and those venomous recriminations which rankle for a whole generation and make moral union impracticable.

If the matter is to be finally disposed of in India, I must state my conviction that the only safe principles to build on are the reverse of those set forth so vigorously by the Acting Chief Justice. If conspiracies and false accusations, are so common as he thinks, if rancorous spite and perjury are so universal and so successful, that is a terrible blot on the Native character, but a terrible blot also on the British administration of India. Our criminal courts must be the most cruel instruments of injustice that the world has ever seen. We must have failed in our attempts to train Native Magistrates to conscientiousness and intelligent pride in doing their duty. We ought to acknowledge our failure and close every court not presided over by a European. The Native Magistrates must be either the tools or the accomplices of the worst of all criminals, and in either capacity can do nothing but mischief.

Now it would be a foolish thing to suppose, as some Natives do ignorantly suppose, that the ordinary Englishman has not gained a great advantage over the ordinary Asiatic by the constitutional training which is for him the inheritance of so many centuries. Justice is more in reality a matter of temperament of tradition and training than of mere cleverness. To this extent I think there is a reasonable basis for the desire of Europeans to be tried by their own countrymen rather than by Natives of any other country. But they must know well that it is not every Englishman who is fit to be a magistrate or judge, nor every Native who is unfit. They are bound to recognise that other people besides themselves have their pride and their prejudices, that universal jealousy would make their own position in this country untenable, and that the organization of the tribunals must be regulated by considerations of the general good, not of what would best suit a small section of the community. If they do not recognise all this, their judgment is of little or no value, though, as the object of Government is to make subjects happy, their susceptibilities should still be wounded as little as may be compatible with the general welfare.

It is impossible that India should be permanently attached to England, except by the growth of some community of feeling between the people of the two countries. It is impossible that there should be such a community of feeling without some community of interests and employments. This has been the principle on which Native gentlemen have been admitted to the Civil Service. They should be admitted sparingly enough to become imbued with its spirit and traditions. Thus admitted and carefully selected for the higher positions, there is no reason why they should not discharge their duties with credit to themselves and advantage to the public. The honour of our race is concerned in the experiment, and individual Englishmen must make some sacrifices for the sake of proving that they can train a nation.

If there is to be no movement, no participation of power with Natives, what must be the result? The English will a generation hence be still more a caste than they are now. With their special advantages it is to be feared they may become an arrogant and unkind caste. Natives even of the highest character must meanwhile sink lower in their own esteem and grow more unfitted for the functions and position that we deny them. It is only by training, and trial by selection and association, that we can surround ourselves with worthy assistants, and colleagues in the work of government. Are we to put off the work indefinitely because it is attended with some difficulty? Will the difficulty grow less with time? Is not the difficulty very much in ourselves? And has not almost every Englishman who has worked with Natives of the higher order found them on the whole sensible and right-minded? Grant that there is some prejudice at present against Europeans, is not this accounted for by a consciousness of not getting altogether fair play from Europeans? It appears to me, I confess, that to enrol Natives in the Civil Service, and then humiliate them as members of the service, would be the surest of all means of spreading discontent amongst the most influential classes, and of making moral and political progress impossible.

It is said that the task of trying European offenders exceeds the capacity of a Native, because of his ignorance "of our manners, customs, and habits of thought." But if false and malicious accusations by Natives are—as it seems they are—the chief evil to be guarded against, it is surely of more importance that the Magistrates should know the habits of thought of Natives than of Europeans, and in this respect a Native Magistrate has a positive advantage. The advantage is not indeed so great as some people suppose. The sharp divisions of caste prevent the higher classes of Hindus from gaining an intimate knowledge of the ways of the lower classes, but still they know on the whole rather more than the European, and they are thus so far better fitted to sift the evidence of unprincipled witnesses. There is a great deal of exaggeration in what is said on this subject, and daily experience shows us that European Judges not knowing even a word of a Native language still arrive on Native testimony at convictions so strong that they act on them unhesitatingly in condemning Native prisoners to death. The real difficulty in practice will arise from the habitual relations of domination and submission between Europeans and Natives. The associations thus created cannot on either side be shaken off at a moment's notice, and any want of strength or balance of character in a Native Magistrate trying an English rough is likely to lead the latter into some insolence or violence of a graver character than the petty offence of which he was first accused. The Native Magistrates who are to try Europeans ought to be as far as possible from peculiarities that would excite contempt or ridicule in the accused, and they should be placed, if possible, amid more decent and dignified surroundings than are common in the Mofussil.

As to the particular provisions of the Bill, I am of opinion that it ought, in the first instance, to be limited, as the original project was, to the object of placing Native members of the Covenanted Civil Service on the same footing as their European comrades. When the experiment pushed thus far has proved successful, and people have grown familiar with the exercise of the jurisdiction, it can be pushed a step further. It can also be withdrawn from, if necessary, or the Government may pause until a new stage in general development has been reached.

The European brought before a Native Magistrate should for the present have a right to claim trial by an English Magistrate. The necessity of giving security and of going to jail until they could be taken before a European would make most accused forego their privilege. The statistics could be gathered after a few years, and the ground would thus be laid for a safe step in advance.

A European committed to the Sessions Court should in all cases be tried by jury. He thinks much of this mode of trial; Natives do not, but if a general feeling in favour of it should arise, I think there are probably but few districts in which it might not be introduced.

The Sessions Judge should himself preside at all trials of Europeans. They should not be handed over to the Assistant Judges. Section 4 of the Bill should be modified accordingly.

A Native Magistrate inquiring into a charge against a European should have authority to transfer the case at any stage to a European Magistrate. This would get rid of many practical difficulties in the least invidious way. I think it undesirable that the District Magistrate should be empowered to constitute a special bench for the trial of a European. The exercise of the power would excite jealousy and distrust, and every case of acquittal of a European against the opinion of the Native Magistrate would be paraded as an instance of injustice through race prejudice. The District Magistrate should have power to withdraw or transfer any criminal inquiry whatever (as, in fact, he has under section 528, Civil Procedure Code) for good cause, and beyond this it is not, I think, desirable to go. The fewer occasions there are for expressed differences of opinion between Magistrates, the better.

Articles (b), (c), (d), should, I think, be struck out of section 1 of the Bill. The time will have come for enacting them when article (a) has been proved successful by a few years' working.

The High Court, Bombay,
8th May 1883.

(Signed) R. WEST.

MINUTE by the Honourable Mr. JUSTICE SCOTT on the CRIMINAL PROCEDURE
CODE AMENDMENT BILL.

Had I been asked to express an opinion on this measure six months ago, I should have minuted in its favour without hesitation. But the unofficial class in India is a most important body, and its opinion, when expressed with force and unanimity, as it has been on this matter, deserves careful consideration. I do not, however, find any thing in the objections raised sufficient to make me change my mind, although they incline me to invest the proposed change with further guarantees.

It must be remembered that in 1836 the extension to Native Magistrates of jurisdiction over Europeans in civil disputes, and in a less degree, the abolition of Grand Juries in 1865, raised a similar outcry. Yet even those who denounced them are now ready to admit the beneficial operation of both acts.

It seems to me that the principle of this Bill is not only a sound one, but it has been under discussion for many years, and has been already virtually admitted by the Government of India. It was thus stated by Mr. Ilbert when he introduced the Bill to the Council of India: "In the matter of a limited criminal jurisdiction over European British subjects to substitute for the disqualification arising from race a qualification depending on tried personal fitness."

In 1849 the principle was proposed, but it was thought the time had not come for its adoption. In 1856 and 1870 the Indian Law Commission strongly recommended that all classes should be made equally amenable to the same judiciary. In 1872 the principle again was brought forward and its adoption once more postponed, but only by a majority of one in the Council of India.

Meanwhile the circumstances of the case had changed. The Royal Proclamation of 1858 had announced Her Majesty's gracious will that, "as far as may be, the subjects of whatever race or creed should be impartially admitted to offices in the service of the Crown, the duties of which they might be qualified by their education, ability, and integrity, duly to discharge."

This was followed by the opening of the doors of the Covenanted Civil Service to such of the Natives of India as passed the requisite examinations.

In 1879 another important step was taken in the same direction. It was decided that a certain number of nominations of young Natives should be made, so as to bring up the number of Indians to the proportion of one-sixth of the whole number.

Thus the Civil Service was thrown open to the Natives of India. It was intended they should go to the Judicial Side, and, as a matter of fact, I believe those that have entered have done so. To this fact must be added that Natives do not go much on leave and do not retire as European officials do. It is obvious that eventually the proportion of Native Judges will be nearer one-third or even one-half than one-sixth of the side of the service they have mainly chosen.

As their numbers increase, and Natives have risen to the rank of Sessions Judge and First Class Magistrate, it will be obviously impossible to deprive them of the powers attached to these offices. In the first place it would amount to a denial of the advantages of the service they have been invited to enter, and that invitation, instead of allaying discontent, would be a cause of Native irritation.

Then, again, as the number of Native Judges increase, the European judiciary will diminish. European tribunals will become rarer. Thus, unless this change is made, there will be an increasing denial of justice to all Native suitors who may have been wronged by European British subjects, and cannot afford the expense and delay of attendance at a distant European tribunal. The increase of the number of European Judges is not possible. Already the cost of the Government of India is as great as its people can bear. The true remedy is to be found in the cautious utilization of the people of the country when they have been trained to the requisite fitness. There is no doubt of their power to reach the requisite fitness. It is sufficient to cite the testimony of the Lord Chancellor given in the debate of the 10th April last, who, in his experience as a member of the Judicial Committee of the Privy Council, found "the judgment of the Native Judges of India bore most favourable

" comparison, as a general rule, with the judgments of the English Judges (of India)."

I now come to the objections that have been raised to the Bill. The first and most common is that race prejudice will influence Native Magistrates unfairly against the accused. The obvious reply is that race prejudice might all along have injured Mahomedans, Pársis, Native Christians, and non-British Europeans, and yet no complaint has been heard. But there is another argument to which, I think, not enough weight has been given. Ever since 1836 Native Judges have had no race limit placed on their civil jurisdiction. European British subjects have come within their reach just as any other inhabitant of India. Now, it seems to me that, if race antagonism is strong enough to destroy judicial impartiality at all, it would have worked on the Civil as much as on the Criminal side. The temptation is as great to injure a man in his pocket as in his person. Yet I have heard of no case of importance where injustice has been worked in the Civil Courts from this cause.

The next objection is that cases will be trumped up against Europeans and successfully carried through with the collusion of the Native Magistrate. There is no doubt a habit of perjury amongst the classes who appear in the Law Courts of this country. But I have rarely, if ever, heard of a Civil Native Magistrate being charged with such roguery, and if it has scarcely ever occurred on the Civil side, I do not see why it should happen more frequently on the Criminal side. The instant dismissal which would ensue on detection is, I think, a sufficient safeguard.

Another objection to the Bill lies in the absence of publicity in the Mofussil. This is a sound objection, which, however, must be annually decreasing in force. Since 1872, when the principle of this Bill was only rejected by one vote, railways have doubled in extent, telegrams and letters have doubled in number, and post offices and letter boxes have multiplied from 5,000 to 11,000. The inability of parties to obtain the assistance of counsel is also urged, but to this objection I do not attach so much weight. The accused who can afford to pay for counsel can afford to appeal against the decision.

The jurisdiction even of the Sessions Judge is so carefully limited, the power of intervention of the High Court so wide, and appeal so easy, that I do not attach very much weight even to the want of publicity. I think the European British subject will make his voice heard if he ever suffers a serious injustice. Nor have I any expectation that the introduction of this Bill as law will be followed by a host of unfounded charges. I am more afraid that the Native Magistrate may not have the moral strength to treat offending Europeans with due severity if they happen to be persons of local importance.

For this last reason, and in deference to the opinions of the non-official class, who are the persons most affected by the proposed Bill, I adopt, with a slight modification, the proposal of the Government of Bombay to associate for the present an European Judge with the Native Magistrate in cases above a certain importance. But I would make the co-operation of the European Judge a matter of course. I would suggest that for this purpose High Court or Sessions Judges should go on circuit. Such a periodical visit would lend more publicity to Mofussil proceedings. The difficulty of a difference of opinion would arise, but might be solved by summary reference to the High Court.

The special privilege of Jury trial, if accorded to Europeans alone, would, I fear, excite a feeling of inequality, and I prefer the previous plan. Moreover, it would be difficult to find Jurymen.

A third plan has been suggested in some quarters, to give the accused the option of being tried by the nearest European Judge or by the resident Native Judge. I think very likely the option would seldom be exercised. But it might be used as a means of expense, would certainly cause delay, and would oust the Native Magistrate from the jurisdiction which, as a Covenanted Civil Servant, he is in principle entitled to possess.

Finally, I think the test of fitness should be rigorously imposed. The Native Magistrate to whom this new jurisdiction is entrusted should, as far as possible, receive the training of a European Covenanted Civil Servant. Thus would be secured not only the ordinary intellectual qualifications, but the Native of India would also have experienced the civilizing influence of a residence in England. This rule would, no doubt, exclude the new Native

Civil Service. But it would be within the principle of personal fitness which is the avowed basis of the Bill.

(Signed) J. SCOTT.

13th May 1883.

LETTER from the COMMISSIONER, in Sind, to HIS EXCELLENCY THE GOVERNOR
AND PRESIDENT in COUNCIL, Bombay.

Judicial Department.
No. 766 of 1883.

Commissioner's Office, Karáchi,
May 8, 1883.

RIGHT HONOURABLE SIR,

I HAVE the honour to reply to Resolution No. 2258 in the Judicial Department, dated 2nd ultimo, calling for my opinion on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. The Statement of Objects and Reasons shows that the Bill has been prepared because "it was thought anomalous that, while Natives of India were admitted to the Covenanted Civil Service and held competent to discharge the highest judicial duties, they should be deemed incompetent to be Justices of the Peace and to exercise jurisdiction over European British subjects outside the Presidency towns." Whether the long established custom that the British in India should be tried only by judges or magistrates who are themselves European British subjects is rightly described as an anomaly is of little consequence, but if it be admitted that it is so, then the long continued existence of such an anomaly surely indicates that its existence has not been permitted without good reason.

3. When writing in June last, regarding the changes proposed, I expressed an opinion that these were not needed, and the discussions that have since that time taken place have only strengthened and confirmed this opinion. Whatever may have been thought when the Bill was first introduced, there can be no question now that the changes it is sought to introduce would be highly unpopular to the European community. The feeling of dislike to being tried by a Native magistrate may, in a certain sense, be unwarranted, but it is to me at all events a perfectly intelligible one, and I cannot therefore blame those who hold it.

4. The European British subject has hitherto enjoyed certain rights, and these he is unwilling to lose. Any member of the Covenanted Civil Service who had become a Judge or a District Magistrate must, it may be presumed, be qualified to try a European British subject so far as mere legal knowledge and requirements go, but this would not in my opinion be reason sufficient for depriving the European British subject of his long enjoyed and highly valued right and privilege. I altogether fail to see that there are any grounds for fearing that the present state of the law is in any way likely to be productive of harm, and therefore, whether the present law is anomalous or not, I would wish to see it continued.

5. I have never been in a district in which there were not several European Magistrates, and so far as I am aware there are none such. For this reason I do not consider that, so far as magisterial cases are concerned, any practical inconvenience is likely to be experienced by the law being maintained in its present form. Some slight inconvenience might be caused, were the District Sessions Judge a Native gentleman who could not try a European prisoner, but this slight degree of inconvenience would not, in my opinion, justify the change proposed.

6. I do not consider it necessary to explain in detail why I object to the changes proposed. So much has recently been said and written on the subject that I could state nothing new. I fail altogether to see that the continuance of the present law is continuing an "invidious distinction," for, so far as my experience goes, the distinction occasioned no ill-will, and was thoroughly understood and appreciated by the Native community. It is true that since the Bill has been publicly discussed the cry that the distinction is one that is unjust to the Native community has been raised, but this clearly is merely a

result of the agitation caused by the proposed Bill, and would never, it may confidently be asserted, have been heard, had the Bill not been discussed, and, I may add, at times attacked with so much virulence by some of the European community. The agitation in favour of the Bill was in no sense spontaneous.

7. There is one other point to which I may refer as an argument against the Bill, namely, that it would not put an end to all distinctions between trials of European British subjects and Natives, and that anomalies would still remain which could only be removed by the repeal of the whole of Chapter 33 of the Criminal Procedure Code,—a course that I do not believe even the supporters of the present Bill would venture to recommend. This being so, matters had much better be left as they are.

I have, &c.
(Signed) H. N. B. ERSKINE,
Commissioner in Sind.

LETTER from the ACTING COMMISSIONER, N. D., to the UNDER SECRETARY
TO GOVERNMENT, Judicial Department, Bombay.

No. 921 of 1883.

SIR,

Camp Alibág, May 10, 1883.

I HAVE the honour, as directed in Government Resolution No. 2258 of 2nd April 1883, Judicial Department, to submit the reports of the District Magistrates in this Division upon the Bill to amend the Code of Criminal Procedure, 1882. The District Magistrates of Kaira and Kolába have forwarded, in original, separate reports by their Assistants and Deputies, and these also will be found amongst the papers herewith sent.

2. As regards my own opinion, I have but little to add to the views I expressed as Collector and Magistrate of Khándesh, when the question was mooted last year.

3. I then stated that a few years hence some or all of the changes now proposed by Mr. Ilbert will probably have to be made, but that in my opinion their introduction should be delayed as long as possible. I further stated that as a rule Native Magistrates in the mofussil would rather not have the power to try Europeans, and this opinion I still hold.

4. I should now be glad to see Mr. Ilbert's Bill placed on one side and its further consideration deferred for an unlimited period, as I certainly think that the objections raised to its proposed provisions on the part of the European population of this country are based on solid grounds and are, therefore, worthy of consideration and respect.

5. It would of course be unbecoming for me or any other officer to hazard an opinion as to whether the Government of India can, just at this moment, shelve the Bill without loss of dignity. If, however, it be decided to proceed with the amendment of the Criminal Procedure Code, I would earnestly recommend that the appointment of Justice of the Peace in the mofussil be conferred only upon members of the Covenanted Civil Service, *i.e.*, those who gained their position by competition in England.

6. It would be easy for every one of us to argue at great length in support of our own particular view of the question, but, as the matter has already been publicly and officially considered from every possible point of view, it is undesirable for individual officers to say more than is absolutely necessary. It

* E. G. *vide* the opinion of the Magistrate, F. C., Mr. Bahmanji Modi of Kaira herewith sent.

may be taken as proved, however, that the general opinion of Europeans of every class and of a few Natives also* is opposed to a change in the Law.

I have, &c.
(Signed) W. H. PROPERT,
Acting Commissioner, N. D.

LETTER from the COMMISSIONER, C. D., to the CHIEF SECRETARY TO
GOVERNMENT, Bombay.

Judicial Department,
No. P.-775 of 1883.

SIR,

Camp Mahábleshwar, April 14, 1883.

WITH reference to the Government Resolution, No. 2,258, dated 2nd instant, I have the honour to state that in my letter, No. P.-1,345, dated 29th June 1882, I deprecated any change in the existing law as being unnecessary and uncalled for.

2. Viewing the subject by the light of the very grave demonstrations of feeling that have been shown by the European community, it is clear that the opinion already recorded by me was correct. I would now go even further and urge that, as there is no necessity for the measure, it would be most impolitic to force the change which all experience has proved to be most uncalled for.

3. It cannot be urged that it is called for, because the present law is a species of class legislation. Were that an argument to be admitted, then all the special privileges that so many members of the Native community enjoy, such as immunity of certain classes from attendance at Civil Courts and the immunity granted to Pardah Nashin women, &c., &c., must in common sense and justice be swept away. Were this done, the Natives who enjoy the privileges of so much special class legislation would be the greatest losers.

4. Europeans prize greatly their privilege of being tried by Europeans and by a jury of their countrymen before the High Court. While nothing practical is to be gained by a change in the law, much will be lost. The question is not one which affects the Bombay Presidency so much as other places, as in almost every place in this Presidency ready access to European aid and counsel could be obtained. Anyhow the matter must not be dealt with in a sentimental manner. It is all very well to say that the Natives are fit for this and that duty, but they are not fit for all duties, and certainly they are not fit by training and experience to try Europeans. No Government has the right merely for the sake of uniformity and as a mere matter of sentiment to deprive any body of its subjects of one of their most highly prized privileges; and if no better reason than mere sentiment and a desire to make the law uniform can be brought forward, the sooner all idea of any change in the law is abandoned, the better. The proposal to change the law has already done much to undo the good feeling between the Europeans and Natives, and has overturned the labour of love and good feeling which has for the past 50 years actuated our best men. If the measure is pressed forward, it will widen the breach between the races, and the very first case in which a Native Magistrate deals unwisely and harshly with a European will cause a storm. It is only necessary to imagine a case in which a Native Magistrate should sentence a European to whipping, or a case in which a European female should be unjustly sent to a jail or lock-up. The storm which would break over Government would be such as Government could ill bear, while the race antipathy would be so intensified as to defy all future attempts to allay it.

5. As the measure is unnecessary and uncalled for, and as no good can be derived from the change, why not leave good alone and let the law stand as it is.

I have, &c.

(Signed) E. P. ROBERTSON,
Commissioner, C. D.

LETTER No. S.P.-234 of 1883, from the COMMISSIONER, S. D., to the CHIEF
SECRETARY TO GOVERNMENT, Judicial Department.

Kánara District, Camp Kumbharwada,
May 6, 1883.

SIR,

I HAVE the honour to state with reference to the Bill to amend the Code of Criminal Procedure of 1882 that I adhere to the opinion expressed by me on 22nd May last, No. P.-731—4 Confidential.

Government Resolution, No. 2,258, dated 2nd April 1883.

I have, &c.

(Signed) ARTHUR CRAWFORD,
Commissioner, S. D.

LETTER No. P.-731 of 1882, from the COMMISSIONER. S. D., to the CHIEF SECRETARY TO GOVERNMENT, Judicial Department.

SIR,

Camp Ratnágiri, May 22, 1882.

IN reply to your letter, No. 2,985—Conf. of 13th instant, I beg to state that in my opinion it is very desirable to place all the members of the Covenanted Service, whether European or Native, selected by competition, on the same footing with regard to criminal proceedings against European British subjects. As regards those appointed by nomination (Native Civil Service), it will not be invidious, at least for some time to come, to lay down that they shall not try European British subjects, unless they have exercised magisterial powers for three years. A similar restriction has been placed on all Assistant Sessions Judges (*vide* Section 444 of the New Criminal Procedure Code).

I have, &c.

(Signed) ARTHUR CRAWFORD,
Commissioner, S. D.

OPINION of the Honourable the ADVOCATE GENERAL.

No. 31 of 1883.

Bombay, April 28, 1883.

I do not consider the proposed modifications of the Ilbert Bill mentioned in your letter of the 22nd instant advisable.

I think they will not satisfy either party and will tend to keep alive the present agitation.

They will dissatisfy the Europeans because they abrogate the principle which exempts them from the jurisdiction of Natives in criminal matters, and open the door to further concessions, and the Natives will not be satisfied with less than they expected, and will know that by continuous agitation the jurisdiction now given will be extended little by little, until at last they are placed (as they consider they ought to be) upon an equal footing with Europeans.

In my opinion it is wisest to settle the matter once for all. Either drop the Bill or go through with it.

LETTER No. 560 of 1883 from the REMEMBRANCER OF LEGAL AFFAIRS to the CHIEF SECRETARY TO GOVERNMENT, Judicial Department.

HONOURABLE SIR,

Poona, April 26, 1883.

I HAVE the honour, as desired in Government Resolution No. 2258 of 2nd April 1883, to submit my opinion upon the Bill to amend the Criminal Procedure Code so far as it relates to the exercise of jurisdiction over European British subjects.

2. On the structure of the Bill I have no remarks to offer. It is designed to "remove from the Code at once and completely every judicial disqualification which is based merely on race distinctions," and this object it will no doubt effectually attain, if it becomes law.

3. But in the case of a Bill of this nature it is, I presume, the policy of and necessity for the proposed change in the law, rather than the manner of effecting that change, which the Government of India are desirous of obtaining opinions upon. This is a matter upon which I might write at much length, but as a great deal has already been written and said on both sides of the question, and I should only, in giving my own opinion in detail, repeat many of the arguments which have already been very ably stated by other persons, I will confine myself to a few observations which appear to me to strike at the root of the matter.

4. I take it that it has been demonstrated to conviction that the Bill is not required "for the more effectual and impartial administration of justice." The only other grounds upon which its necessity is urged are—

- (1.) The removal of the slur upon the character of Native members of the Covenanted Civil Service, who, when they become District Magistrates and Sessions Judges, are not permitted by the present law to exercise jurisdiction over European British subjects; and
- (2.) The administrative inconvenience which this disqualification is already beginning to cause and will hereafter cause increasingly, until the full

proportion of Native civilians have been appointed to the service and have risen to the grades of District Magistrate and Sessions Judge.

5. The law, as it at present stands, recognizes the fact that European British subjects object to their being liable to be tried by Native officers, both because they do not give those officers credit for being able to rightly understand and appreciate their motives or the evidence on which they might rely, and also because, as a rule (to which I am glad to be able to admit there are several honorable exceptions), they do not sufficiently trust those officers to believe that they would act impartially towards them. This is a feeling which is not confined to the non-official classes, but is almost universal amongst Europeans. Its existence has been so long recognized by the law that exemption from the jurisdiction of Native officers has come to be regarded by European British subjects as a highly prized privilege, their one safeguard against the intrigue, the deceit, and the wily cunning with which they find themselves daily surrounded. The agitation caused by the publication of the Bill under consideration shows how great is the strength of this feeling still, and how averse the classes who will be affected by the change in the law are to part with their privilege.

6. The slur which is impliedly cast by the existing law upon the character of Native Judicial Officers is due simply and solely to this intense regard which European British subjects, resident in this country, have for their own safety against false charges, false evidence, and indiscriminating and perhaps partial judges. No Native who knows his own country can say that this feeling is unreasonable, no one with a spark of patriotism in his breast can say that it is unnatural. The question then arises, is it expedient for the sake merely of removing the implied slur upon the character of a few Native Judicial Officers to deprive European British subjects of their cherished privilege? I think not. On the contrary, I think that the proposal to do so is unjust. Unjust to the English official classes to whom immunity from false prosecutions is as the breath of their nostrils. Unjust to the non-official classes, engaged in trade or other industries, who can only venture to carry on their affairs in the remote parts to which they repair, if they are secure against dishonest and false inventions of Native rivals and cliques. Still more unjust to the poorer classes of European British subjects settled or sojourning in different parts of India, themselves the mainstay of our power, or the descendants of the men to whose prowess and self-sacrifice we Englishmen owe the possession of the country to-day and Natives owe the peace, the security, and the prosperity which they enjoy under our rule.

7. But it is not merely the wish for the removal of an implied slur which appears to me to be actuating the large number of Natives who are interesting themselves in the passing of this Bill. Every Native fully understands the reason of the law as it now is, and marvels, not that European British subjects should cling so closely to this one privilege which they enjoy, but that they should be content with so small an exceptional right. But it is obvious to them that the abolition of this last shred of distinction between themselves and European British subjects will finally bring both races to one common level. The desire to accomplish this end is, I believe, the motive which is really influencing those members of the Native community who are so busy at calling together meetings and memorializing Government in favour of the Bill; for, as has been frequently remarked in the course of the discussions on the measure, the Native community at large has no real interest or concern in the proposed change in the law, the only Natives whom it can affect are the few Native officers in the Civil Service. If then the Bill be passed, will the political effect of the accomplished degradation of European British subjects be for good or for evil to the Empire? To me it seems that it will be fraught with evil.

8. The administrative inconvenience which it is alleged that the present law causes and will cause increasingly hereafter is, I submit, very much exaggerated. To take our own Presidency—there are at present but two Native Covenanted Civilians, one a Sessions Judge and the other an Assistant Sessions Judge. Mr. Fagore has been a Sessions Judge for some years now. So far as I am aware, not a single case has yet arisen in which his disqualification to try European British subjects has given rise to inconvenience. The

railway works to which the Honourable Mr. Gibbs alluded in his speech in the Legislative Council as about to be commenced at Kárwár are, I understand, still in the future, and, should they be commenced shortly, there are many other stations in the Presidency to which Mr. Tágore might be appointed—with satisfaction, probably, to himself where there is little or no European population amongst whom criminal cases are likely to arise. Mr. Thákur will not, in the ordinary course, be a Sessions Judge for some years to come. The Native Civilians appointed in this country are as yet only at the bottom of the list. It is clear, therefore, that in this Presidency the present law is not likely to lead to any administrative inconvenience for some years yet.

9. Nor will the administrative inconvenience which it may cause ever be considerable or unavoidable. One-sixth of the Civil Service only will be Natives, even when the rules under the 33 Victoria, chapter 3, are in full force. At the most therefore one-sixth of the Sessions Judges and of the District Magistrates at any given time may be Natives. Surely the Executive Government would have no difficulty in locating this number so as to prevent any such inconvenience as the framers of this Bill wish to obviate. But if this should be found impossible, the difficulty might readily be met by enacting that, if the District Magistrate is a Native, the jurisdiction over European British subjects ordinarily exercisable by District Magistrates shall vest in the Sessions Judge and *vice versa*. It is scarcely probable that the District Magistrate and the Sessions Judge of a district will ever both be Native Civilians, and at any rate such a contingency could always be avoided by the Executive Government.

10. Assuming, however, that the state of the law should occasionally necessitate the transfer of a magisterial or sessions case against an European British subject to another district, that would not, after all, be a very great hardship. The very works, which furnished the Honourable Mr. Gibbs with his most forcible illustration of the hardship likely to arise, would in a short time result in establishing railway communication between Kárwár and Dhárwár, and the journey from one place to the other would be no more than the journeys which hundreds of suitors have now to make from the Khaira District to Ahmedabad, from the Broach District to Surat, from the Kolába District to Thána, and from the Sholápur District to Poona. The fact has been quite overlooked that railways and other means of rapid communication are being spread over the length and breadth of the country, simultaneously with the appointment of an increasing number of Native Civilians, and that, by the time any serious difficulty is ever likely to occur, the transfer of a case to the adjoining district or the deputation of a special officer to try the case on the spot will be a matter of but very slight inconvenience. But were the probable inconvenience as great as the supporters of the Bill conceive it to be, I would still be of opinion that even that amount of inconvenience is worth submitting to for the sake of maintaining inviolate the right of an European British subject to be tried by none but an European British subject. If it be admitted—as it is on both sides—that for an offence requiring to be punished with more than a year's imprisonment an European British subject ought to be sent to the High Court for trial, it is surely not extending his privilege unreasonably to say that in order that he may be tried by a fellow-countryman, even for a minor offence, his case shall, when necessary, be transferred to the nearest convenient district.

11. I am, for these and other reasons, of opinion that the proposed change in the Code of Criminal Procedure is quite unnecessary, that it unjustly and needlessly deprives European British subjects of a highly valued privilege which they now enjoy without any injury or injustice to the Natives, and that it will be productive, politically, of evil rather than good effects.

12. But it is possible that, in view of the controversy caused by the introduction of the Bill, it may be deemed desirable to pass a measure which without depriving European British subjects altogether of their privilege may yet not disappoint the hopes to which the proposals of the Supreme Government have given occasion in the Native community. Such a measure might be framed in more ways than one.

13. The simplest and, to my mind, the most satisfactory would be to extend the jurisdiction of Native Magistrates and Sessions Judges, as already proposed, but to give every European British subject the right of “appealing unto

Cæsar" the right, that is, of claiming to be tried by an European British subject. No doubt many trivial cases would occur in which an accused person would rather submit to be tried by the Native Magistrate on the spot and at once than incur the delay and trouble involved in a transfer of his case elsewhere. Many instances also would certainly occur, and as years roll on there is reason to hope that their number would increase, in which the character of the Native official would be so well established and so highly respected that his jurisdiction would be voluntarily accepted. But if the right of the accused, being an European British subject, to claim to be tried by an European British subject were reserved, the prospect of being constrained to submit to the jurisdiction of Native officials, which is all that is really objected to by European British subjects, would be removed.

14. It would not be absolutely necessary that in every case in which an European British subject thus claimed his right to be tried by an European British subject the case should be transferred to another district. If it came before a District Magistrate who was a Native, it might be transferred to the Sessions Judge of the same district; if he were an European British subject and *vice versa*, the law empowering the High Court to give the necessary directions and providing that the powers ordinarily exercisable by the one officer shall be exercised by the other for the special purposes of any such case.

15. So far as concerns cases which come before a Sessions Judge, it has been suggested to me that there would perhaps be no objection to remove the disqualification of Native Officers, if section 460 of the present Criminal Procedure Code, which provides that—

"in every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans"

were repealed and in its place the provisions of section 234 of Act X. of 1872, which directed that every trial of any such person before a Court of Session "shall be by jury" were restored and extended so as to include European British subjects. I have never been able to understand why the law should place Europeans (not being European British subjects) and Americans in a less favourable position than European British subjects. Such a distinction appears to me to be utterly unreasonable and selfish. But whilst I agree that Europeans, whether British subjects or not, and Americans should be placed on the same footing, I do not think that it would be expedient to make trial by jury compulsory in all cases against European British subjects which come before a Sessions Court. The limit of punishment which can be awarded in such cases by a Sessions Court is one year's imprisonment, which shows that the offences to be tried by it are not of so serious a nature as would usually be submitted to a jury. Moreover, the majority of Sessions Judges having no experience in the trial of cases by jury would find the change of procedure difficult to adopt satisfactorily in an occasional and rare case. But the chief argument against the suggestion is, I think, that it would not be acceptable to the opposers of the Bill whose great objection is that the trial should be presided over by a Native Officer, for the popular mind attributes great power to the presiding Judge even in trials by jury.

16. Another and, in my opinion, a better expedient would be to require that whenever an European British subject is arraigned before a Native Officer, he shall be entitled to claim that a Magistrate or Judicial Officer of standing who is an European British subject shall be associated with him on the Bench, and that in the event of a difference of opinion, whether as to law or as to fact, provision should be made for a reference of the point to the High Court for decision. This plan would probably answer well as regards cases coming before Native District Magistrates and would also meet the difficulty in cases triable in Sessions Courts with the aid of assessors, but it would be unsuitable in the few cases triable by jury. This last objection to it might be surmounted by directing that all trials of European British subjects in Sessions Courts shall be with the aid of assessors, and that for them trial by jury shall be confined to the High Court. This would also remove the practical difficulty which is likely to occur in some places of obtaining a sufficient number of Europeans or

Americans to form "not less than half the number of jurors," if the accused person claims to be tried by such a mixed jury under section 451 of the Code.

17. I have restricted my remarks and proposals in this Report to Native District Magistrates and Native Sessions Judges, because in the debate on the Bill in Council it appears to have been the general opinion that legislation is only necessary for Native civilians of that standing. In that opinion I entirely concur and would earnestly deprecate the grant of jurisdiction over European British subjects, even in any modified degree or form, to Native officials of lesser standing.

I have, &c.

(Signed) J. R. NAYLOR,
Remembrancer of Legal Affairs.

SIR,

Mázagaon Castle, Bombay, May 7, 1883.

I HAVE the honour to acknowledge receipt of your letter No. 2,595, dated 18th ultimo.

2. I have ventured to delay my answer, not because I had not made up my mind but in order to observe and watch the proceedings of the meeting of Saturday last in the Town Hall.

3. I have long felt that the present was a fair case for a just compromise being arrived at, whereby the irritation felt by the European community on account of the proposed change in the existing law would be soothed down.

4. That the unjust and impolitic restriction placed by the existing law ought to be removed does not in my humble opinion admit of much doubt. Even among the non-official European community will, I am sure, be found many who will be ready to acknowledge that the disability complained of by the Native community is to them a sore grievance and humiliation and not a mere fanciful or sentimental hardship.

5. As to section 1 of the Bill, I think that all persons holding the office and powers of a Magistrate of the First Class should be invested with the powers of a Justice of the Peace. I am humbly of opinion that no invidious distinctions ought to be made between civilian or non-civilian officers.

6. By the removal of the disability against all Magistrates of the First Class who are Natives, one grand aim will have been achieved at one stroke. It does not seem expedient that such a vexed question should be again and again mooted. If the disability as regards Civilian Magistrates of the First Class alone be removed, as the Bill at present purposes to do, the question will sooner or later arise upon what principle the continuance of the disability against officers belonging to the Uncovenanted branch of the service is to be justified. When such a question is once more started for public discussion angry passions will again run high.

7. In my humble opinion much of the irritation will subside if the European British subject, whenever brought up before a Native Magistrate of the First Class, were given the privilege of claiming at his option the benefit of another Magistrate of the First Class, who should be a European British subject, being associated with such a Native Magistrate on the Bench.

8. As to sections 2, 3, and 4 of the Bill, I have no observations to offer.

9. I venture to think that Magistrates of the District and Sessions Judges, whether Native or European, ought to be given the jurisdiction *ex-officio* over European British subjects, the former by reason of their high and responsible position, and the latter not only because of a similar reason but also because at Sessions trials they are not sole and independent Judges.

10. In the case of all trials of European British subjects at a Mofussil Sessions I think the accused should at his option be given a trial by jury of whom at least half should be Europeans. If they prefer a trial by the Sessions Judge with the aid of assessors I do not see why they should not have their choice, but the privilege of trial by jury ought to be given to them out of respect for their national usages, and this would go far to quiet the minds of the European community who are so loud in their complaints against a Native Sessions Judge.

I have, &c.

(Signed) JAMSETJEE JEJEEBHAY.

The Hon. C. Gonne,
&c. &c.

SIR,

High Court, April 19, 1883.

I HAVE the honour to acknowledge the receipt of your favour No. 2,595 of 1883 (Judicial Department), dated the 18th April 1883, requesting my opinion on the Bill for amending the Code of Criminal Procedure, 1882—so far as it relates to the exercise of jurisdiction over European British subjects—and to reply there to as follows:—

I have very carefully watched the proceedings in the Supreme Legislative Council in reference to this Bill; I have also read and considered what has been said and written both for and against the Bill at various public meetings and in the newspapers and elsewhere, and I must say that I have formed a very strong opinion both as to the justice and the necessity of the Bill in question.

The principle on which the Bill is founded seems to me perfectly unassailable; the object of legal machinery being simply to secure impartial justice, it ought to have no reference to the race of the Judge but only to his qualifications. The question ought never to be whether a Judge is a European or a Native, but simply whether he is fit for the exercise of the powers entrusted to him.

The present state of the law is not only anomalous but unsatisfactory. A Magistrate of a lower grade, and therefore presumably less qualified, exercises jurisdiction, because he is a European British subject; while his superior, who is presumably better qualified, is declared incompetent to exercise, because he is a native of this country. It seems to me that this state of the law ought not to be permitted to continue unless there are overwhelmingly strong reasons for it. The reasons put forward are as follows: (1) That Native Magistrates and Judges are likely to be swayed by their race prejudices in the decision of cases against Europeans; (2) That a great deal of perjury prevails in India and that false charges are often brought against innocent parties; (3) The difficulty of procuring counsel and the absence of public criticism in the Mofussil; (4) That the Native Magistrates and Judges are not acquainted with the habits and customs of the European community; (5) That a sound State policy requires that the prestige of the ruling race should be kept up, and that the subjection of Englishmen to the jurisdiction of the Natives of India will diminish this prestige; (6) That no administrative difficulty has arisen, and therefore the Bill is premature.

As to the race prejudices,—I am in a position to know that no such prejudices exist in the minds of the Native community against Europeans. The Native Magistrates and Judges may possibly be slightly prejudiced in favour of the European accused—they are not likely to be prejudiced against them. We have the experience of the Presidency towns to guide us on this matter on the specific point, and of the whole of India in regard to the administration of justice in general. Native Judges exercise plenary civil jurisdiction in the Mofussil over all classes including Europeans. They exercise plenary criminal jurisdiction over all the native races of India, but I have never heard it alleged that Hindu, Mussalmán, or Pársi Judges have been guilty of partiality towards members of their own race or actuated by race prejudices against members of the other native communities. I consider this to be a conclusive answer to the insinuation that they would deal unjustly in the case of Europeans.

As to perjury, false charges, absence of counsel, and public criticism. In the first place these difficulties have been greatly exaggerated, and in the next place they have no special application to Native Magistrates and Judges. These difficulties are more or less incidental to the administration of justice all over India. They apply with precisely the same force to European Judges. They also apply to all other cases, both civil and criminal, in which the natives of India are concerned. The substitution of a European for a Native Magistrate will not affect the question in the least. The European Judge cannot, merely by reason of his race, detect a true charge from a false one. In order to do so he must have natural ability, knowledge of the law, and judicial experience. But these are precisely the qualifications which are to be found in Native Judges to whom this Bill applies. Besides, if the Native Judges possess these qualifications sufficiently to try cases of murder and pass sentences of death against the Natives of India, it seems unreasonable

to suppose that they are unfit to exercise the small amount of jurisdiction which the Bill confers upon them in regard to European British subjects. The chances are that they would use more care and caution in disposing of a case against an Englishman than ever against their own countrymen.

As to want of acquaintance with the habits and customs of the European community. This is not true with regard to Covenanted Civil Servants who have spent years in England, nor with regard to those who have been educated in England or mixed freely with the Europeans in India. Besides this is not a difficulty which deserves very serious consideration. The English Judges, even the Judges of the High Court, know next to nothing about the masses of the Native community. Many of them do not even understand their language, and yet no one has ever argued that they are unfit to try natives of India by reason of their imperfect knowledge of the Native community. Although a special knowledge of the ways of the accused may not, of course, be without its use, it seems to me that what is really essential in the administration of criminal justice is a knowledge of the law and of the world at large combined with ability to appreciate evidence—in other words, the very qualifications which the Bill secures to the European community in a remarkably high degree.

As to prestige of the ruling race, I cannot see that it will be in the least impaired by this Bill. The Europeans will still possess the privilege of being tried by specially qualified Judges and Magistrates. All the safeguards as to appeal, &c. are still preserved to them. Further, I think that the real prestige of the ruling race depends much more upon just and generous laws than upon the exception of the Europeans from the ordinary tribunals of justice.

As to administrative inconvenience, I think it is already grave and will become more and more intolerable every year. Further, it is unjust to compel a native of this country to incur the expense of going to a distant tribunal for redress, because the Magistrate within reach is incapacitated merely by a race distinction.

On a careful consideration of these circumstances, I have come to the unhesitating conclusion that no sound argument has been urged either against the principle or the details of this Bill, but I am convinced that there are strong affirmative reasons in its favour.

I think, in the first place, that it is highly impolitic to introduce questions of race in the administration of justice. I also think that the present state of the law draws an invidious distinction between European and Native members of the Covenanted Civil Service, which ought not to be tolerated. I am also of opinion that trial of European British subjects exclusively by Judges of their own race is calculated to bring discredit on the administration of justice and to produce the impression that the anomaly is maintained not so much for securing impartial justice as for screening European offenders.

I do not think the Bill is at all premature. It is impossible to postpone these necessary amendments without serious inconvenience in the administration of justice. The Bill must—if not now—at least in 2, 3, 5, or 10 years hence, pass in law. In the meantime the friction between the races will go on increasing. The Native Covenanted Civil Servants who have attained high judicial posts must feel naturally annoyed at their subordinates enjoying more extensive jurisdiction than themselves. The moral effect of passing the Bill now, when it will be accepted as a measure of justice, cannot fail to be beneficial upon the native populations, whereas passing it 10 years hence will be regarded as nothing more than a concession to irresistible popular agitation.

I am convinced that the stability of the British Empire depends far more upon just and equal laws and upon a generous treatment of the people than upon anything else; and I am respectfully of opinion that this Bill is nothing more than the necessary outcome of the enlightened policy pursued by the British Government for the last 50 years, and that it will materially assist in promoting feelings of loyalty and attaching the people to the Throne.

But if the introduction of the Bill was in the first instance wise and politic, as I think it undoubtedly was, the passing of it now has become a matter of absolute political necessity. The moral effect upon the native populations of shelving or withdrawing the Bill, under the present circumstances, cannot fail to be pernicious. Such an act will be looked upon by them as a surrender

of right and reason to passion and prejudice, as a triumph of turbulent agitation—however wrong—over calm and respectful representations, however just and well founded. It is impossible not to see the danger of such an idea taking hold of the minds of the 250 millions of the natives of this country.

I would therefore humbly but strongly advise the Government to pass this Bill into law, not only on account of its own intrinsic merits, but also on account of the exigencies of the situation.

The Honourable C. Gonne,
&c. &c. &c.

I have, &c.
(Signed) BADRUDIN TYABJEE.

MY DEAR MR. GONNE,

High Court, May 4, 1883.

I REGRET that I have not been able to reply to your letters of the 23rd and 25th April fully before to-day. I have, however, been so busy during the last few days that I have scarcely had time to look about me.

I may say at once that I fully appreciate the difficulty in which the Government is placed, and I heartily sympathise with the object which the Bombay Government seems to have in view, viz., to bring about a settlement of this vexed question in a manner not only equitable in itself, but with due regard to the feelings of the important communities concerned on each side.

In attempting a compromise two points must be carefully borne in mind. First, the necessity of removing all invidious distinctions between European and Native Magistrates and Judges of *the same position* as far as practicable, and, secondly, the removal of all exceptional provisions calculated to produce the impression—rightly or wrongly—that Europeans are to have, to use Macaulay's words, "something more or something less than justice," or even justice of a kind different from that meted out to the Natives of India. Bearing these two points in mind, I have satisfied myself that the proposals mentioned by you may be accepted as a reasonable compromise by both parties to the controversy.

So far as Sessions Judges and District Magistrates are concerned, your proposals are the same as those in Mr. Ilbert's Bill, and it would be impossible to interfere with them in the slightest degree without trenching upon the principle of the Bill. As I understand, however, the difference between Mr. Ilbert's Bill and your proposals is this—that whereas the former would merely authorise the Government to appoint First Class Magistrates who are members of the Covenanted Civil Service or of the Native Civil Service or Assistant Commissioners or Cantonment Magistrates to be Justices of the Peace, you would make *all First Class Magistrates* to be *ex-officio* Justices of the Peace just like the Sessions Judges and District Magistrates, with this proviso, that under special circumstances the District Magistrate may associate a European Magistrate to sit with the Native Magistrate. After the best consideration I can give to the subject I think your proposal is an improvement on Mr. Ilbert's Bill both from the European as well as the Native point of view. It ought to satisfy the Native community, because it will not only remove the mark of inferiority from Native Magistrates, but also all grounds for even suspicion as to partiality, and it ought to satisfy the Europeans, because they will be comforted by the presence of a member of their own community on the Bench.

I do not think there is any danger of the Natives clamouring for the Bench system in addition to the provisions in Mr. Ilbert's Bill.

As regards the Jury, I see no objection to it if the option is given to all prisoners tried before the Sessions Court. The uniformity of a system of laws is highly desirable, and no exceptional provisions in favour of a particular race ought to be made, if it can possibly be avoided. Your suggestion on this point seems to me to be perfectly harmless, and if you think it would conciliate the European community, I for one would gladly accept it.

With reference to the general principle of the Bill, I have already stated my views both to the Government, in the Press, and at the Public Meeting. You say that I have not dealt with the strongest of all objections, viz., "the absolute unwillingness of Europeans to be tried by persons not of their own race as shown by them in whatever part of the globe they have settled, Turkey, Egypt, China, Japan, &c." Now, with all deference,

this unwillingness to be tried by Turkish, Egyptian, Chinese, and Japanese Magistrates is founded, *not* upon the difference of *race*, but upon the proved incapacity or corruption of the Judicial Officers in those countries. Race has nothing to do with it. It is the quality of justice administered in those countries that has compelled Her Majesty's Government to secure special treaty rights, not merely for British-born subjects, but all subjects of Her Majesty, whether Natives of India or of England. Moreover, there is nothing to prevent the Consular Courts from being presided over by Asiatic subjects of Her Majesty, provided they are fit for the post. If the objection had been founded on mere difference of race, and not of qualifications, you would have expected similar arrangements in France, Germany, Austria, Italy, Russia, &c., all of which countries are peopled by races different from the English. Further, look at Ceylon—the Native Magistrates there exercise jurisdiction over Europeans no less than over Natives. Again, I understand that in the French and Portuguese territories in India no such distinction is recognised.

Although, therefore, I can understand and appreciate the feelings of the European community on this point, I cannot see any just or valid foundation for them.

The Honourable C. Gonne,
&c. &c. &c.

I have, &c.
(Signed) BADRUDIN TYABJI.

SIR,

Bombay, April 23, 1883.

I HAVE the honour to acknowledge receipt of your No. 2,595 of the 18th instant, in which you inform me that the Governor in Council will be glad to have my opinion on the Bill for amending the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

In reply, I beg to state that I entirely approve of the decision of Government "to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based on merely race distinction."

That there is no immediate necessity for the change is, in a sense, true; but I cannot agree with those who regard the present disability of Native Magistrates as a mere sentimental grievance unworthy of serious attention.

To withhold from the Native Members of the Civil Service powers granted to Europeans is to maintain an invidious and, to the former, a humiliating distinction, calculated to lower their self-respect, and to rouse the indignation and resentment of the educated classes throughout the country; and I am therefore of opinion that Government has acted wisely in bringing forward this measure voluntarily, and anticipating an agitation, which is certain to come if it be withheld.

With regard to the opposition which is being offered to the Bill, it is no doubt matter of serious concern that almost the whole non-official European community has been arrayed against it; but I respectfully submit that, unless better reasons be advanced than any yet offered to the public, the removal of judicial disqualification based on race distinction should not be delayed.

The ascendancy of Englishmen in India will not be maintained by their hedging themselves round with privileges; and when men talk of their rights as members of the conquering race they forget that every forward step in the British advance in India has been made with the aid of Native allies, and that our position in the country is largely dependent upon the good-will of the people.

It is natural that a man should prefer to be tried by one of his own race and speech, but it is simply absurd that a European should regard it as an indignity to be placed under the jurisdiction of a Native Member of the Civil Service.

As regards the fears expressed by the opponents of the Bill, that Native Judges are likely to favour their countrymen, and that false charges will be encouraged, they seem to me exaggerated and to a large extent without any tangible foundation.

It may be admitted as probable that the common people will more readily bring charges against Europeans (be they true or false) before a Native than a European Judge; but what justification is there for presupposing that the one will deal less impartially with such cases than the other?

The conduct of the Native Magistrates in the Presidency cities has not been impugned, and the suggestion that they would act differently if placed in some remote place in the interior, and not subjected to the constant light of public opinion, is a mere assumption.

For my own part, a long and intimate friendly intercourse with educated men in this country leads me to believe that the natives will do no discredit to the Service to which they have been admitted.

They are proud of the position they have attained, and will strive to justify their title to it as acting up to the noble traditions of the Service.

Since the beginning of this year I have been twice in the North-West and the Punjab, once before and once after the promulgation of this Bill, and on both occasions I saw a good deal of non-official Europeans and Eurasians; and I am satisfied from what I heard, that the hostility to the Bill has been excited, not so much by the Bill itself as by the previous action of Government with respect to appointments of men of European race to the Uncovenanted Service and to the Public Works Department.

Intense indignation is not unjustly felt at the declared preference of so-called natives over men of European origin, born and reared in the country, and I respectfully urge that Government should at once cancel all orders basing disqualification for employment on race distinctions.

I submit that the Government should recognise *fitness* only in making its appointments, engaging the best men it can get, irrespective of race and creed. At the same time I can see no reasonable objection to a preference being given, other things being equal, to a *Native* over a *European*, meaning by the former a man born and brought up in the country, whether of pure European or mixed blood or not, and by the latter a man who has come from beyond seas.

I omitted to say above that I consider a European has a right to expect that those who have jurisdiction over him should thoroughly understand his language.

In the case of Native Members of the Covenanted Civil Service, this is guaranteed by the severe examination they have successfully passed; but in the case of the Native Civil Service it is probable that men will be sometimes appointed whose knowledge of English is imperfect, and, from such, jurisdiction over Europeans should be withheld.

The Honourable C. Gonne,
&c. &c. &c.

I have, &c.
(Signed) JOHN FLEMING.

SIR,

Bombay, April 23, 1883.

WITH reference to your letter, No. 2,595, of 18th instant, asking for my opinion on the proposed amendment of the Criminal Procedure Code, so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to submit the following for the information of His Excellency in Council, as my humble view of the subject which His Excellency in Council has been pleased to refer for my opinion.

2. This amendment is but the natural outcome of the wise and benign policy of the British Government as proclaimed from time to time to Her Majesty's subjects in India. Time was when education had scarcely made any progress among the people of this country; when peculiar criminal laws had to be locally administered in different parts of the country quite unsuited to the usages and traditions of European British subjects, and when perhaps for the consolidation of the power and the preservation of the prestige of the British rule in the peculiar circumstances of a newly subjugated and half-civilized country, a partial exemption in favour of Europeans from the ordinary local tribunals, and especially those presided over by Natives, and the provision of exclusive criminal tribunals and an exclusive criminal procedure were necessary. But the conditions have now completely changed,—education has spread, and is spreading far and wide; a century and more has rolled over the conquered country; the consolidation of the Empire has been accomplished

and its stability placed upon a permanent basis ; a uniform Penal Code and law of procedure (with some exceptions only as to the law of procedure in the three Presidency Towns) have been promulgated throughout the length and breadth of the country ; the removal of all distinctions of caste, colour, or creed has been repeatedly proclaimed in statutes issuing from the Imperial Parliaments, and in Royal Proclamations issuing from the Throne. And the time has long since come when all distinctions between the trial of Europeans and of Natives ought to be altogether abolished.

3. Any distinctions favouring one class of subjects over another in the present progressive state of the country deeply wound the growing intelligence of the people, who plainly perceive and keenly feel such distinctions as so many violations of the plighted faith of the British nation. Such distinctions are obviously mischievous, for they alienate the affections of the people, and are in direct opposition to the noble principle and policy of the British Government, *i.e.*, to rule India not by mere force, but through the affections of the people.

4. I am aware, on the other hand, that distinctions in favour of European British subjects have long existed and must needs be cherished by them as their vested birth-right. It would convulse those who have hitherto enjoyed these to withdraw them altogether and at one stroke. This must be effected gradually as time and opportunity may favour the enforcement of the declared principle and policy of the British rule.

5. But the proposed amendment is indeed only a comparatively small advance in this direction. It only contemplates the placing of certain trusted and experienced Native Officers of Government in the exercise of the judicial office upon an equal footing with Europeans, and no more—but not the subjection of the British-born European indiscriminately to all the ordinary tribunals of the country which administer criminal justice to the people at large, nor to assimilate the peculiar procedure devised in his behalf to the ordinary procedure adopted far and wide in respect of the entire people. The proposed amendment is thus in itself a step of no large import, but is important in so far as it recognises and carries out, even though it be to a limited extent, the grand principle of Government which underlies all administration in this country.

6. The opposition made by non-official European classes is to a great extent the result of short-sightedness and class prejudice, and especially of false notions of pride of race and superiority over Natives of this country.

7. The Europeans, who are thus opposing the measure, if they merely divest themselves of the notions which now cloud their judgment, will at once admit that under Native officials they are likely to receive, if possible, more consideration than even under European officials ; for the former will naturally be careful to bear in mind, when trying European offenders, that their actions will be vigilantly watched in every direction, and they would rather err in leaning towards, than in being arrayed against, the European offender. All the fears entertained by those who oppose the Bill are more imaginary than real.

8. It is a matter well worthy of note that while Europeans profess the extremest aversion to being tried by Natives *in theory*, *in practice* they frequently seek trial at the hands of Natives rather than of European Judges. On the 18th of this month prisoner Dwyer, a European soldier, was charged with the murder of a native up country, and was put on his trial at the Criminal Sessions at the High Court, just closed. He was alleged to be insane, but the European counsel who defended him used his best endeavours to secure a Native Jury. He not only did not avail himself of the privilege which his client possessed of claiming a jury, the majority of whom should be Europeans, but actually challenged no less than eight European jurors, and he might have succeeded in getting an entirely Native Jury, had the law permitted his challenging more than eight jurors without assigning reasons. I might quote as well another recent instance in which all the European offenders in a certain case at Allahabad preferred being tried by a Native Judge to being tried by a European.

9. The only inference that can be drawn from these and other similar instances is, that frequently European offenders do not *in practice* object to their trial before a Native Magistrate, although *in theory*, under false notions of

"superiority and pride of race, they may insist upon their right to be tried by Judges of their own nationality.

10. The oppositionists, too, have not even shrunk from using the argument against this Bill, that, although highly educated, the Natives do not possess that rectitude of character which is necessary for the impartial administration of justice. This assertion it is hardly necessary to combat, but if the Bill be now abandoned in consequence of their clamour on this ground, it would be inflicting undeserved degradation on the Natives and attaching to them a cruel stigma, for they would thereby practically be proclaimed to the world as wanting in uprightness and moral character.

11. In conclusion, therefore, I beg leave to state that, in my opinion, the righteous and impartial policy of Her Majesty's Government towards India cannot be perfected so long as the oft-given generous promises of equal administration without distinction of caste, creed, or colour is not carried out in its integrity. The present proposal, therefore, to place trusted and experienced Native officials on a par with their European brethren in the service, so far as their powers relate to the exercise of jurisdiction over European British subjects, is a step tending in the right direction; and is not only in perfect unison with the generous and righteous policy England maintains in the Government of India, but is imperatively demanded by that policy.

I have, &c.
(Signed) RAGHUNATH NARAYEN KHOTE.

The Honourable C. Gonne, &c. &c.

Bombay, 84 Malabar Hill,
April 26, 1883.

MY DEAR MR. GONNE,

I RECEIVED yesterday your demi-official of the 23rd instant. I have already submitted my views on Mr. Ilbert's Bill generally in answer to the official reference which his Excellency was pleased to make to me. I had then scarcely any conception of the modified proposals, which were under the consideration of Government, and which are set out in yours under reply.

I have given to these proposals my best consideration, and taken as a whole I believe they are eminently calculated to suit the present exigency. My firm belief is that the scheme you have defined will soothe the irritation of the European population, while it will remove the evil complained of by the Natives. I take leave to deal with each proposal in order:—

- (1.) District Magistrates, Native or European, doubtless must be given the jurisdiction *ex-officio*, but we all know that in practice they will have few or no opportunities of exercising it. They will enjoy the jurisdiction more as a compliment to their responsible position than from any actual need for the exercise of it, except in very rare cases. My impression is that in practice they now exercise original jurisdiction in exceptional cases only.
- (2.) and (3.) All Sessions Judges, whether Native or European, ought I think to have the jurisdiction *ex-officio*, but it would be to my mind desirable to make it imperative that they should be aided in such cases by a jury, of whom at least half should be Europeans. The same rule should apply to Assistant Sessions Judges. A trial with the aid of assessors would not I think give complete satisfaction. A trial by jury so constituted would have an almost magical effect on the European mind. I am persuaded that the opportunity might be taken to enlarge somewhat the limit of sentence which it is competent to Sessions Courts to pass upon European culprits. The present limit of one year appears to me to be ridiculously low.
- (4.) The Bench system as regards Magistrates of the first class would become a valuable amendment to Mr. Ilbert's Bill. It would satisfy all parties, and would have the additional advantage of removing the invidious distinction between civilian and non-civilian Magistrates of the first class. It would give greater confidence in the tribunal when both concurred in the verdict or sentence, and the provision for a reference to the High Court in case of difference of opinion would remove all room for complaint. There would, I take it, be the remedy by appeal in case of conviction as at present.

Thus altogether the scheme appears to me an extremely satisfactory one, and I venture to hope that it will eventually find its way in the shape of amendment into Mr. Ilbert's Bill.

I am going to take advantage of the opportunity I have offered to me in convening the meeting next Saturday to set forth the outline of the scheme for the consideration of the speakers, and I will avail myself of the liberty held out to me to say that I have reason to believe such a scheme is at present under the consideration of Government. I will take care to indicate that nothing is known as to what conclusions Government may eventually arrive at.

I will also take the liberty of using the considerations which you have given me as your own personal views. I agree with them *in toto*; and in putting them forward I fear I shall be using your own language for the simple reason that in conveying the same thoughts I cannot find any better of my own.

I saw Mr. Badrudin this afternoon, but he had no time, so we shall meet to-morrow again to compare notes.

I have, &c.

(Signed) RAGHUNATH NARAYEN KHOTE.

The Honourable C. Gonne,
&c. &c.

SIR,

Kolhápur, April 24, 1883.

WITH reference to your letter No. 2,595, dated 18th instant, I have the honour to append a brief statement of my views on the "Native Jurisdiction Bill," a copy of which was enclosed in the letter under reply.

I cannot help thanking his Excellency in Council for giving me an opportunity of expressing my sentiments on the important Bill which has attracted so much public attention.

I have, &c.

(Signed) MAHÁDEV WÁSDEV BARVE.

The Honourable C. Gonne,
&c. &c.

NOTES on the Honourable Mr. ILBERT's "Native Jurisdiction Bill" by
MAHÁDEV WÁSDEV BARVE.

THE Bill has originated in a desire to remove certain legal disabilities under which the Native members of the Civil Service are placed in the matter of trying European British-born subjects. Its object is to place all the classes of Her Majesty's subjects in this country on a footing of equality in the eyes of law. The old law of Europe seems to have recognised distinctions between the followers of different religions, and the restrictions in the Indian law, now proposed to be dispensed with, are evidently a reminiscence of that law. In the early days of the British rule in this country these protective restrictions were excusable and, indeed, desirable, owing to, among other causes, the ignorance of Natives to understand the spirit of the English law which is so remarkable for its tender regard for the liberty and honour of an individual. Circumstances, however, have now vastly changed. The spread of English education among the Natives has raised their status, and they are found qualified for admission to the ranks of the Civil Service. Several of them, when invested with powers like those now proposed to be conferred upon them, have exhibited on the Bench moral rectitude in no way inferior to that of their English compeers. Indeed, I am not aware of any instance in which a Native has abused these powers to the prejudice of any European subject. Surely, such a case, if any, would have been pointed out and commented upon. The whole animated controversy which the Bill has given rise to is at least singularly silent as to any instances of abuse of this sort.

But the desire to make the necessary amendments in the present law appears to have been prompted, not only by the improved tone observable in the official ability and rectitude of Natives, but by certain administrative difficulties which threaten to make legal proceedings in cases (for which the present Bill is intended to make a satisfactory provision) clumsy and circuitous, not to say

that it would be inconvenient to the public and unnecessarily humiliating to the "pick and cream" of the Native Civil Service. The exclusion of Natives from the exercise of powers which are conferred upon European members of the Civil Service, of their own and sometimes of inferior standing, must have been a source of incessant uneasiness to them. These powers, considered by themselves, are not among the cherished objects of the ambition of any thoughtful Native in this country; but, when viewed in connection with other privileges which are liberally bestowed upon them, they have naturally become covetable objects, not for their own sake, but because exclusion from them is looked upon as a badge of inferiority.

If the amendments of the present Bill had been proposed about a year ago, when the whole Criminal Procedure Code was revised, they would probably have not evoked anything like the present violent and ungraceful opposition. Those who have studied carefully the history of English legislation in this country, which has always been animated with a desire to make the law progressive and equable, by curtailing provisions which savour of race prejudices and distinctions, have acquired such a confidence in the instinctive uprightness of British statesmanship that they do not feel any hesitation in saying that sooner or later the reform intended to be introduced by the present Bill will be carried out. But if on the present occasion the Bill were allowed to drop, simply for the interested opposition of a very small section of the community, it would show on the part of Government a painful disregard to the feelings of the people of this country, the more so especially as the opponents of the Bill have not been able to show any reason for giving it up, except its being unnecessary and impolitic. But the necessity of the measure, as mentioned above, has been practically felt; and as to the complaint that the measure is impolitic, it may be more correctly said that the withholding of the said powers from Natives would be still more impolitic.

I am humbly of opinion that the time for extending the jurisdiction of Native Magistrates has arrived, and that as the powers under the amended law would be conferred only on such Native members of the Covenanted and Uncovenanted Civil Service as would show themselves deserving of them by several years' service of approved integrity and ability, the danger, which it is alleged would result to the people of the class over whom the jurisdiction would be exercised, is simply imaginary and unfounded.

MAHÁDEV WÁSDEV BARVE.

Kolhápur, April 24, 1883.

SIR,

Ahmedabad, April 28, 1883.

I HAVE the honour to acknowledge your letter, No. 2,595, of the 18th instant, in which you desire me, by the direction of his Excellency the Right Honourable the Governor, to submit my opinion on the Bill for amending the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. As the law at present stands, the exercise of criminal jurisdiction over what are called "European British subjects" outside the Presidency towns, is limited to judicial officers who themselves are European British subjects. In other words, those servants of the Crown in India who do not fall within the definition of "European British subjects," and who are chiefly Natives of the country, are, though they are appointed to high posts and are deemed competent to discharge high judicial and administrative functions, declared incompetent by law to exercise criminal jurisdiction, even of a very limited character, over European British subjects outside the Presidency towns.

3. This disability arising out of race distinction is not only considered as opposed to the fundamental principle underlying the administration of the British Government in India, but it is also felt as the source from which increasing administrative inconvenience will spring.

4. The Bill now before the Legislature proposes to do away with this artificial disability created by law, and to place the exercise of criminal jurisdiction over European British subjects on a basis which will be differentiated, not as heretofore by distinction of race, but by distinction between the two great branches of the Civil Service, viz., the Covenanted and Uncovenanted, the

former including what is known as the statutory Native Civil Service. Assistant Commissioners in non-regulation provinces and Cantonment Magistrates are also proposed to be included in the category.

5. Further, though the disqualification arising from race is sought to be removed, the conferring of the powers necessary for the exercise of criminal jurisdiction over European British subjects is proposed, except in the case of Session Judges and District Magistrates who are to be Justices of the Peace *Ex-officio*, to be permissive. It is left to the discretion of the Executive Governments to appoint to the office of the Justice of the Peace only such of the persons belonging to the classes named, as they may think fit.

6. This Bill, so far as it relates to the proposal of giving powers to Native Magistrates and Judges, has met with fierce opposition, chiefly from the non-official European community of India.

7. The Bill is opposed on the ground that under its provisions the personal liberty of European British subjects incurs grave risk of being jeopardised, and that European enterprise and capital, of which India stands in so much need, will be scared away from the country by such a feeling of insecurity.

8. The reasons assigned for this apprehension generally are, (1.) incapacity of Native Magistrates and Judges to understand European manners and customs and ways of thought, (2.) liability of Native Magistrates and Judges to be swayed by race prejudices, (3.) prevalence of perjury and existence of a custom to get up false charges against innocent persons in India, and (4.) absence of publicity and public opinion and of proper legal assistances in the mofusal.

9. These arguments and others of a more or less similar nature have been urged on the one hand and answered on the other with force and ability both in and out of Council, and in India and England generally. In fact, all that can be said on both sides of the question has been said; and I do not think there is now any new light to be thrown on the discussion of the subject.

10. I shall not, therefore, weary his Excellency the Governor with a repetition of what has already been said and said so well, but content myself with respectfully expressing my opinion in a general way that there is little or no real force in any of the arguments advanced against the Bill as above stated; and that the apprehensions entertained as to the insecurity in which the lives and liberties of European British subjects will be placed by the proposed measure, and as to all the evil consequences arising therefrom, are groundless.

11. The existing legal safeguards in favour of European British subjects, the education and the moral surroundings of the Native officials on whom the choice of powers will fall; the trial of mental and moral qualifications they will have undergone before being invested with powers; their skill in detecting frauds and falsehoods acquired from a course of previous judicial training and from their more intimate knowledge of Native habits and thoughts; a vigilant supervision on the part of Government; a jealous watchfulness on the part of the European community generally; the knowledge on the part of the Native Judges and Magistrates that they are watched and are on their trial; the network of railways and electric wires all over the country which have annihilated all difficulties of time and space; the growth of an intelligent public opinion even amongst the natives of the mofusal,—all these militate against the supposition of anything liking to go wrong in the way apprehended.

12. Similar fears were expressed and evils predicted when the so-called Black Act was passed in 1836; but time has proved them to be all groundless.

13. It is said that in Her Majesty's possession of Ceylon the natives of the place exercise criminal jurisdiction over Europeans. If so, we have not heard of any evils arising out of such exercise of jurisdiction; and there is not a small influx of European enterprise and capital in Ceylon.

14. Other non-Asiatic nationalities, such as Americans, French, Germans, Italians, &c., though they are generally akin to European British subjects in religion, habit, and thought, and are not distinguishable from them in the eyes of the Natives of India, are not exempted from the jurisdiction, civil or criminal, of Native Judges and Magistrates; and it is not shown that they have suffered any inconvenience or hardship from the operation of such jurisdiction over them. And it appears somewhat inconsistent that the opponents of the Bill,

while they evince so much anxiety for the safety of European British subjects, should not extend a tithe of their solicitude for the protection of other classes of Europeans and Americans, who have so many tithes of affinities with them, and who will equally be the objects of persecution or victims of incapacity at the hands of Native Magistrates and Judges.

15. But it appears that the opposition to the measure proposed arises not so much from a rational conviction of any serious dangers apprehended from its operation as from a sentiment that it would be *infra dig* and loss of prestige for the people of the ruling race to submit themselves to the jurisdiction of Native Magistrates and Judges. It is also just possible that the classes from which European criminals are drawn have a lurking fear that if the present Bill were to become law, justice will overtake them more speedily than under the present system, which is productive of delay and inconvenience to all parties concerned.

16. The feeling of race superiority is a natural feeling and cannot be altogether ignored; and it must also be admitted that the preservation of English prestige is desirable from many points of view. But the English are eminently a practical and just people; and I have no doubt that when passions are subsided, and when they come to learn by experience that a certain class of Her Majesty's servants who have been invested with certain powers have proved themselves worthy of exercising those powers, and that no harm has come out of the exercise of those powers, they will not be slow to extend the right hand of fellowship to their Native brethren. They will not be slow to recognise the change time has wrought, and to declare that it is alike unfair and inconsistent with the just principles of their own Government that a class of Crown servants, otherwise qualified in every respect, should, simply from the accident of their nationality, be under a perpetual ban of ignominy which is subversive of self-respect, and a high moral tone.

17. I remember the time when there was a strong prejudice against Natives being made solicitors and barristers; and I also remember the days when it was considered simply blasphemous for a European to place himself under Native medical treatment. But I have seen these prejudices wearing off in my own lifetime. Now Native solicitors and barristers stand shoulder to shoulder and work side by side with their European brethren in the dispensation of Her Majesty's justice. European solicitors send briefs to Native barristers and *vice versa*. European solicitors and barristers plead before Native Judges. Native surgeons don Her Majesty's uniform; and not only European gentlemen but also their families avail themselves of Native medical aid.

18. In the same way I feel sure that the honest English instinct will assert its ascendancy, and the prejudice against Europeans appearing for their trial before Native Magistrates and Judges will wear out in course of time; and perhaps after some years it will be wondered why so much enthusiasm, which might have been reserved for a better cause, was exhausted upon this little Bill.

19. In these circumstances, I humbly think that Government, in order to show every due deference to the feelings and sentiments of the large and important European community of India—important both to Government and the people of the country—should, for the present, introduce the measure in such a tentative form as the gradual working of it will in time disarm it of its fears and suspicions, and convince it that Government, while remaining loyal to the fundamental principles of the British rule in India, and while bound to remove all administrative inconvenience, will take no step which is not called for by a change in time and circumstances. With this view, I would respectfully propose that powers to try European British subjects outside the Presidency towns in the limited way authorised by law should, for the present, as far as Natives are concerned, be conferred only on those Native servants who have entered or may hereafter enter the Covenanted Civil Service by open competition in England. The high test of proficiency they pass, their residence in the midst of Englishmen in England for a number of years, and their observation of English manners and customs and ways of thought will and ought to be a guarantee that they will properly discharge the functions entrusted to them. When this arrangement is found to work satisfactorily, as I have no doubt it will be, and when further administrative inconvenience is

felt, the process of giving powers to Natives may be carried further without, it is hoped, much opposition on the part of the European community of India.

20. This brings me to the consideration of what is called the "thin-end-of-the-wedge" argument. It appears to me that the fears, or I would rather say the anticipations, of the European community on this point are not unfounded. The present Government can speak only for itself. It cannot bind its successors. And it is impossible in the nature of things that in the varying vicissitudes of human affairs a kind of compact can be made and maintained for ever against any change whatever in some particular respect. An enlightened and progressive administration, whose motto is equality of status before the law, cannot look with complacency or indifference upon such personal laws or class privileges as may be found to hamper the good Government of the country. All that the Government can say will be that it will make no change lightly, make no change which will not be called for by the necessities of the administration.

21. The conclusions then at which I have arrived and which I have ventured to submit above with all respect and deference are—

1. That the principle of the Bill is perfectly sound and is in consonance with that lofty standard which the British nation has in its enlightened wisdom adopted in the Government of India.
2. That there are no grounds for apprehending any evil consequences from this measure to the lives and liberties of European British subjects or to the material development of India.
3. That the opposition to the measure has arisen more from a sentiment that it will be derogatory to the prestige of European British subjects to submit themselves for trials to Native Magistrates and Judges than from any other cause.
4. That this feeling on the part of a large and important community is, in present circumstances, entitled to all reasonable respect.
5. That this feeling will be temporary and will disappear as similar feelings in connection with other questions have disappeared under a calmer and juster appreciation of things.
6. That when Englishmen in India come to know by actual experience that the powers conferred upon a certain class of Native servants have been wisely used, and that no mischief has arisen from the exercise of those powers, their natural instinct of justice and fair play will not recoil from recognising the fact and admitting that it is, for the sake of a sentiment, as unfair to Government that their administrative work should be obstructed as to a deserving class of Her Majesty's servants that they should be branded with an everlasting stigma of infamy.
7. That to bring Englishmen in this frame of mind it is desirable and expedient to proceed tentatively.
8. That with this object in view the desired powers may for the present be conferred on those Native Officers who have entered or may hereafter enter the ranks of the Covenanted Civil Service by open competition in England.
9. That when this arrangement is found to work satisfactorily, as no doubt it will be, the fears and suspicions now entertained will, to a great extent, be removed, and the system may be extended further as only administrative necessities may dictate.

22. Before concluding, I would refer to one point more, and I refer to it not as an objection or suggestion from me, but as a point which is not clear to me. Under the Bill in question four classes of officers are eligible for the office of the Justice of the Peace:—(1) members of the Covenanted Civil Service, (2) members of the statutory Native Civil Service, (3) Assistant Commissioner in non-regulation provinces, and (4) Cantonment Magistrates. Section 7 of the Bill provides that "nothing in this Act shall affect the validity of any appointment made before the passing of this Act." Thus the powers as Justices of the Peace of European military and other officers who may now be in the positions of Commissioners, Political Agents, Session Judges, District Collectors, &c., will not be affected; but such officers appointed after the passing of the Act will not be eligible for the office of Justice of the Peace. Unless, therefore, it be intended that all such officers, whether in regulation or

non-regulation provinces, will in future be filled by members of the Civil Service only, it would appear that the Legislature, while trying to curtail the area of administrative inconvenience on the one hand, is, on the other, extending it, by placing a large class of servants of rank and position beyond the pale of jurisdictional powers.

The Honourable C. Gonne,
&c. &c.

I have, &c.
(Signed) PESTANJI JEHangIR.

SIR,

High Court, Bombay, April 26, 1883.

I HAVE the honour to acknowledge receipt of your letter, No. 2,595 of 1883, Judicial Department, dated the 18th instant, requesting me to furnish Government with my opinion on the Bill for amending the Criminal Procedure Code, 1882, now before the Legislative Council of his Excellency the Viceroy; and in reply to that letter I beg to state my opinion as follows:—

Dealing with the question raised by the Bill, first as one of principle only, I own that I cannot see any possible ground on which its main object can be assailed. That object is not only in complete consonance with the principles which have been laid down as the guiding principles of British administrative policy in this country during the past half century; it is also in consonance with the lessons which all the past history of the world teaches us. The more earnest and thorough-going the attempts made to weld into one corporate body with co-equal rights and privileges any two races standing in the position of governors and governed, the greater the stability of the Government, and the greater the permanent happiness of all classes of the population. This seems to me to be so manifest, and is, indeed, so far conceded by the opponents of the Bill in question, that it is quite unnecessary to labour that point any further. The point which is really raised for consideration by the opponents of the Bill is not the propriety of passing the Bill in the abstract, but the propriety of passing it under the present circumstances of the country. I venture to think that there is nothing in those circumstances to take the Bill out of the operation of the general principle above adverted to.

For what are those circumstances? It is said that to invest even a small number of Native Magistrates, as this Bill proposes to do, with jurisdiction to try Europeans accused of criminal offences, is to interfere, to some extent, with the foundations on which British power rests in this country. With all due respect for the quarter from which this argument comes, I must say that I find it very difficult to consider it seriously. No one is more ready to admit than I am that in the present circumstances of the country the existence of British rule in India is absolutely necessary for her advancing in civilization. But I cannot see that the foundations of that rule are in any way injuriously affected by the provisions of the Bill under consideration. The fundamental principle laid down by successive Indian authorities for years past, from provincial Governors to the Houses of Parliament, is that Natives of this country should be associated, gradually it may be, but still steadily, and more and more largely, in its administration. And the contention that the very short step now proposed to be taken in furtherance of that principle will in any way dislocate, so to speak, the foundations of British power here, is a contention which can only be accepted by one who is prepared to condemn as short-sighted politicians all the most eminent Englishmen who have studied Indian questions—from Elphinstone and Malcolm to Fawcett and John Bright. The British empire in India does not rest on European placemen for its pillars. And if it did, it is not so weak and tottering that the addition of a few Native placemen, or even their substitution for European placemen, need shake it in the slightest degree. But then it is said that the prestige of the British name will be gone if European accused persons are made triable by Native Magistrates, and British prestige is a most potent factor in the stability of British power in India. When the notion of prestige is made to do duty in this way, one may, I think, be pardoned for treating it very much as Carlyle did; but the truth is that the prestige of the British name, which ought to be sedulously guarded, is not the prestige of its might, but rather of its capacity and its readiness to do right. ~~The former will be of but little avail if the latter is sacrificed. And how can the sacrifice of the latter be avoided if, in the face of the great proclamation of~~

1858, such distinctions as those which this Bill seeks to remove are kept up year after year, and decade after decade, without even any slight and gradual interference? How can that sacrifice be avoided if the Government, which lays down an inflexible rule about the right of Mahár boys to go, if they please, for their education to the nearest public school, will nevertheless prevent Native complainants from going for redress against a European to the nearest of the established public tribunals of the land? But further, if there is anything in the argument from prestige, it is conclusively answered by two observations from two different points of view. First, under the law as it stands, and as it has stood now for many years, in all civil cases wherever instituted, and in criminal cases in the Presidency-towns, Europeans are already subject to the jurisdiction of Native judicial officers; and, secondly, under the proposed Bill, Europeans and Natives are very far, even now, from being placed on a par in the Mofussil. In the face of these considerations it seems to me impossible to attach much weight to this argument from prestige.

A good deal has been said about the absence of public criticism in the Mofussil, and the difficulty of getting the help of competent counsel there; and something has also been said about the ignorance of Native Magistrates regarding the manners and customs of Europeans. I do not wish to deny that there is some force in these circumstances; but the first two of them apply as much to the cases of Native as of European accused persons. And as to the last, most of the persons on whom the jurisdiction is likely to be conferred will be men who, by their education and their modes of living and thinking, will know a good deal more about the manners and customs of Europeans than European Magistrates ordinarily know about the manners and customs of Natives. Why, then, should not the Native Magistrate be trusted to administer justice as well to Her Majesty's European subjects as European Magistrates generally do to her Native subjects? And here, I think, it deserves to be remembered, though it seems not to have weighed at all with those who have publicly spoken on this subject, that if it is necessary for a Judge to be familiar with the manners and customs of the class to which the person to be tried belongs, it is at least as necessary for him to be familiar with the manners and customs of the class to which the witnesses whose evidence has to be weighed belong. It follows, therefore, that in some important respects the Native Magistrate would actually be better equipped than the European Magistrate to try even those fabricated cases against Europeans about which we have heard and read so much during the past few weeks, and to detect that perjury about which such exaggerated and sensational statements have been frequently made.

I have not in the above remarks considered the suggestion that Native Magistrates will consciously do injustice to a European accused person merely because he is a European. All I need say upon that suggestion, which has been made in some quarters, is, that it is entirely unfounded. From all I know of my countrymen in Western India, and from all I could learn of my countrymen in Bengal, while I was among them in connexion with the duties of the Education Commission, I can confidently assert that there is no foundation for that suggestion, or for supposing that any such hostility to Europeans exists among educated Natives as the suggestion seems to imply.

It is further objected to this Bill, however, that no inconvenience has yet arisen which renders the proposal embodied in it necessary. Although I am no friend of over-legislation I cannot accept this view. If I find a provision of the law, not defensible in principle, occasioning injury and inconvenience to any portion of Her Majesty's subjects, I think that provision ought to be abrogated. And if innocent persons, concerned as prosecutors or witnesses in cases where Europeans are the accused persons, have to be hurried over long distances from their homes, I consider the injury and inconvenience thence resulting to be grievances which claim redress at the hands of Government. The Procedure Code of 1872 took one step towards granting such redress. The present Bill takes another. I quite accept the view that there would be a good deal to say in favour of leaving things alone if the question was one merely between a sentimental desire for jurisdiction on the part of Native Magistrates, and a sentimental objection to such jurisdiction on the part of the European community. But that, I hold, is not the question here. The invidiousness of the distinction sought to be removed is only one consideration in favour of the change proposed to be made in the law. The anomalous, and sometimes practically inconvenient,

results of that distinction and its inconsistency with the Queen's Proclamation are other considerations bearing upon the point which must be weighed together with the substantial injury to prosecutors and witnesses above alluded to. For my own part I concede, or rather I ought to say I maintain, that the authorities should proceed gradually in the operation of curtailing these or any other personal privileges valued and long enjoyed by any class of Her Majesty's subjects. That I consider to be a sound principle of legislation; but applying that principle to the case now before us I cannot perceive that any satisfactory and workable change could be suggested, which, without being illusory, could be much smaller than the change proposed by the Bill.

This brings me to the details of the Bill, and it appears to me that no reasonable objection can be taken to section 2 and following sections. The only part of the Bill which seems to me fairly open to consideration is section 1. I have myself no practical suggestion to make regarding that section. But regarding the reference to Cantonment Magistrates in it, I must confess that I do not quite understand it. As regards the other three classes of officers mentioned in that section, they seem to me to stand on pretty much the same footing. But I do not think that there is any reason for preferring those who would fall under clause (b) of that section to the Deputy Magistrates who belong to the Uncovenanted Service. I confess that I have personally a very strong objection to the whole legislation by which the so-called "Native Civil Service" was constituted, nominally to supplement, but in effect to supplant, the Native Civil Service which formed an integral part of the great Covenanted Civil Service of Her Majesty. And if any one suggested the removal of clause (b) from Section 1, I should not be inclined to oppose that removal if, for no other reason, in order to induce Government to reconsider the whole subject of the admission of my countrymen into the Covenanted Civil Service. But under the law as it stands it would seem to be difficult to place the members of the classes designated in clauses (a) and (b) of section 1 on any unequal footing. It might, perhaps, be better to strike out clauses (a), (b), (c), and (d), and simply give power to the local governments to invest any Magistrate of the First Class with the powers of a Justice of the Peace. This, doubtless, confers on the executive Governments powers which, in strict principle, ought to be exercised by the Legislature directly. But strict principles cannot be logically applied where compromises have to be effected. And in this particular case the executive Governments are sure to be familiar with the probable results of the exercise of such powers on those who may be affected by them.

Upon the whole, then, I venture to give my voice, without hesitation, in favour of the principle of the Bill in question. If any changes in section 1 are likely to disarm the opposition to the Bill which has unfortunately arisen, I would humbly recommend their being accepted. The feeling which has given birth to that opposition is one which in some of its forms commands my sympathy, and I should be disposed to go a considerable way to avoid doing it any unnecessary violence. But a supporter of the Bill is not the best person to suggest any such changes as I have alluded to. At all events, having none such to suggest, I can only submit respectfully the general recommendation made above.

In conclusion I beg to apologise for the delay which has occurred in sending this reply by reason of pressure of other business.

I have, &c.

The Hon. C. Gonne,
&c. &c.

(Signed). KASHINATH T. TELANG.

LETTER from the CHAMBER OF COMMERCE, Bombay, dated 12th April 1883, to the UNDER SECRETARY to GOVERNMENT.

SIR,

Judicial Department.

I AM directed to acknowledge the receipt of your letter No. 2260 of the 2nd instant, forwarding a letter from the Government of India, Legislative Department, No. 246, dated the 17th March last, and of a Bill to amend the Code of Criminal Procedure, with the Statement of Objects and Reasons which

accompanied it, and requesting that Government may be favoured with the opinion of the Chamber on the provisions of the Bill.

The proposed amendments were discussed at a general meeting of the Chamber held on the 6th of March last, and the proceedings of the meeting and the Memorial of the Chamber thereon, dated 22nd idem, were duly forwarded to Government.

The Committee direct me to say that if any further expression of opinion is wanted now, or may be desired hereafter, the Chamber will be happy to furnish it.

I have, &c.
(Signed) J. GORDON,
Secretary.

LETTER from the CHAIRMAN of the BOMBAY LAW SOCIETY to the UNDER
SECRETARY to GOVERNMENT.

SIR,

Bombay, May 10, 1883.

I HAVE the honour to acknowledge receipt of your Letter No. 2,262 of 1883, dated 2nd April 1883, with its enclosures.

1. I placed the letter before the Committee of the Law Society, and the Committee after discussion passed the following Resolution:—

That the Committee, while thanking the Chairman for his courtesy in placing before them the letter in question, consider that its object is to elicit the individual opinion of the Chairman on the subject to which it refers, and are of opinion that the objects for which the Society is constituted will not be furthered by inviting a discussion among its members on the subject.

2. In explanation of the latter part of the Resolution of the Committee I beg to say that the Society is composed of the Solicitors of the High Court, European and Native, and the main objects of its constitution are to maintain the honourable character of their branch of the profession, to bring to the notice of the Court any malpractice of any of its members, and generally to promote the interests of its members as a body.

3. As the Committee considered that my individual opinion was called for, I respectfully beg to submit my views on the subject of your letter.

4. After very careful consideration I have come to the conclusion that the proposed amendment of the law will not be beneficial.

5. As an abstract question I quite admit the right of every inhabitant of India not to be subject to any judicial disqualification based merely on race distinction; but, while admitting that right, I think it impossible to admit its application to the fullest extent where it conflicts with other rights or customs or to the circumstances under which the Government of India have to legislate for the people of this country.

6. If it is asserted that being a right therefore it ought to be applied without regard to any other question, I do not see where one is to pause between the adoption of that principle and leaving the people of India to govern themselves.

7. The question seems to me to be—Will the proposed amendment of the law add to the contentment or happiness of the people of this country? Will it promote good order, and, involved in the above, is it in accordance with the state of things under which the Government of India has been established and rests?

8. First to consider the grievance it is proposed to remedy, now the principal objection of the educated Native to his disqualification to exercise judicial powers over European British subjects in the Mofussil is that it is a stigma on his race and on his judicial integrity.

9. If it be such a stigma, it is shared by Natives of almost all oriental countries. All the European States and the United States of America have insisted on the exclusive right in most of those countries of trying their own subjects in criminal cases by their own Consuls. Nations, such as Turkey and China, who are not wanting in pride, and who have at least as keen a sense of national feeling as the Natives of India, have never made any great difficulty in

conceding these claims of the European States. They appear to have acquiesced in them as fit and natural and carrying no stigma. The natives of India themselves have not been slow to recognise the advantage of such exclusive rights in the dominions of His Highness the Imaum of Muscat. And it is certain if the British were to leave India to-morrow, all the European States and the United States of America would insist upon this right of excluding the Natives from exercising judicial power in criminal cases over their subjects.

10. But I contend, rightly looked at, that there is no real stigma cast upon the Natives by the exclusion at all, and it is only a feeling of false pride which has been unfortunately fostered and fanned into existence which has led the educated Natives to take up this question so warmly.

11. In proof of the foregoing remark I would point to the circumstance that most civilized nations where jury trials exist have recognised, in the institution of mixed juries for the trial of foreigners, the principle that the tribunal which pronounces on the guilt or innocence of a man charged with a criminal offence should not be such that the accused can beforehand disclaim confidence in its justice. The principle is also maintained in the Criminal Procedure Code, in that a Native can claim to be tried in Courts of Sessions by a jury, the majority of whom are not European British subjects (Section 275); they have also the right of challenge on the ground of alienage, and European British subjects have similar rights.

12. I am not aware that the persons who are excluded in these cases from trying the accused consider themselves insulted because they are expressly excluded merely on the ground of race distinction, and I cannot see any difference between a Judge and juror; both have to pronounce on their consciences on the guilt or innocence of the accused, and in giving judgment on questions of facts both stand exactly on the same footing and are supposed to be of equal capacity.

13. The truth is that the Natives of India would not think the disqualification of a Native Magistrate to try an European British subject a grievance at all if it were also the law that the Native could claim to be tried by a Native Magistrate, which claim, as a matter of right, stands on a higher footing than the claim of the Native Magistrate to try Europeans. It is, however, in the present state of things, impossible to allow of this right to the Natives; but that being so, is not a reason for taking it away from European British subjects who cherish it as a custom and for other reasons, in order that some few Natives may not feel the distinction between the two races in this particular.

14. The real grievance, therefore, is that there is any distinction at all between Natives and European British subjects in the Government of this country, but that must remain.

15. To suppose that the mere doing away with this disqualification of the Native Magistrate will have any appreciable effect in abolishing the feeling of race distinction, and so be likely to add to the contentment or happiness of the people, I think is taking an extreme view which is not justified by the facts.

16. It is after all a very small matter compared with what any thoughtful Native must see who looks around him.

17. The British Government, however beneficent its intentions, is after all to the Native a foreign Government, compelled by its position to maintain a foreign army and a civil administration mainly composed of foreigners, and keep under its own exclusive control the whole policy of the country, and to tax the people without their consent.

18. In fact if he looks into the Criminal Procedure Code itself he will still see that it contains important privileges in favour of European British subjects. I do not see how it can be reasonably expected that the doing away with this disqualification will promote the happiness of the people of this country. I think it will so far from allaying agitation only add to it, and the Natives of India will not act like rational beings if they do not ask for a great deal more.

19. While therefore there is no real grievance, and the benefit to be derived from the proposed amendment appears very questionable, on the other hand it is a very serious matter to the European British subjects who are to be made subject to the jurisdiction of Native Magistrates, and as regards the efficiency of the Native Magistrates themselves. Rightly or wrongly the European

British subjects are strongly opposed to it. It is said, of course, by those who support the Bill, that this is the result of race prejudice. This may be unfortunate, but it is a fact which no amount of legislation will get rid of, and will only be brought forward more prominently whenever any question, such as this one, arises for discussion. The Statute Book will still contain anomalies of legislation which are only justified by it. It meets us at every step in our daily conduct as citizens or in social life. It is only the truth to say that the foundations of the British power in India rest upon it. It is useless to ignore it. The question to ask is, it being there, will the decisions of the Native Magistrates in the Mofussil, in cases where Europeans are concerned, command respect? The object of all criminal laws is to deter and not to punish, and if the tribunals are not trusted, more than half the effect of punishment is lost. The accused is no longer in the eyes of his countrymen a criminal, but a victim to race prejudice, the evil influence of which is sure to be charged to the unfortunate Native Magistrate whose duty it may be to condemn. This will not add, in my opinion, to the well-being of either Natives or Europeans, and will only be a fruitful source of ill-feeling between them.

20. Independently of this European British subjects have a profound feeling that in the Mofussil, where they are scattered about, often in remote districts, they will be subjected to false charges before Native Magistrates which would never be brought before an European Magistrate.

21. The pain, anxiety, and expense that an accused may suffer or be put to, though he may afterwards be declared innocent, may often be as great a punishment as any sentence the Magistrate may have power to inflict; and I do not consider the right of appeal as by any means a sufficient safeguard. Courts of appeal do not readily disturb findings on fact, unless they can be shown to be manifestly wrong, and it is only in exceptional cases where there is not at least some sworn evidence to support a finding.

22. It may be said that the foregoing is sufficiently answered by the fact that Native Magistrates have been for many years acting in the Presidency towns, but I do not think these exceptions form any just answer, the circumstances being altogether different. All the safeguards of a vigilant press and the facilities of legal assistance are wanting; besides, the European in the Mofussil is often alone without another European or even a respectable Native near him. In the Presidency towns he is surrounded by others of his own class, and any transaction which may involve him in a dispute with a Native is likely to be known to others who can bear witness for him.

23. Again, it is argued that the Native Judges of the High Courts have power to exercise full criminal jurisdiction over European British subjects; this is true, but I would beg to point out that the Native Judges do not sit alone in disposing of such cases; and the Native Judges of the High Court are chosen from Native gentlemen who have had a long and very extensive practice in the High Courts as advocates, and have obtained in their long residence in the Presidency towns an intimate acquaintance of affairs and especial knowledge of Europeans and their manners and customs, which I do not think can possibly be attained by a Native civilian, though he may have passed a short time in England. The Native candidate for admission to the Civil Service must, during the period he is in England, pass his time in close application to his studies. When he comes out to India he is, in all probability, posted to some station in the Mofussil, where he lives in a world of his own. I do not think that such a training is calculated to make any man a good judge of men or things, or to drive out the strain of hereditary predispositions, which all writers on this subject declare exist for many generations, until counterbalanced or overwhelmed by other influences of a more powerful character.

24. These remarks apply more forcibly to the members of the Native Civil Service constituted under the Statute 33 Vic., Cap. 3.

25. If administrative difficulties are apprehended by reason of the admission of large numbers of Natives into the Civil Service, and an amendment of the law is thought necessary, then I would prefer to see that amendment take the form of permitting Natives to have the right to claim to be tried by a Native Magistrate; any inequality in the law would then be got rid of, and I do not think much inconvenience would arise from it, as in my experience natives, as a rule, have no preference to be tried by a Native rather than by an European.

26. In conclusion, I beg to add that the proposed amendment of the law will, in my humble opinion, do more harm than good ; that there is no necessity for it, as there is no well founded complaint that justice is not properly administered on the present basis ; and that as the present controversy has shown the European British subjects as a body to be violently opposed to it, and as they will be in the main affected by it, all the proposed benefit to be derived by the change in the law will be lost.

I have, &c.
(Signed) H. W. PAYNE,
Chairman, Bombay Law Society.

LETTER from the CHAIRMAN, Bombay Trades' Association, dated May 9, 1883,
to the UNDER SECRETARY TO GOVERNMENT.

SIR,

I HAVE the honour to acknowledge receipt of your No. 2263 of 1883, dated the 2nd April, covering copy of letter from the Secretary to the Government of India, Legislative Department, and copy of Bill to amend the Code of Criminal Procedure, with its Statement of Objects and Reasons, and requesting for the information of Government a statement of my opinion on the provisions of the Bill.

Under another cover I forward to the address of the Chief Secretary to Government a memorial, signed on behalf of the Bombay Trades' Association by the Secretary and myself, against the Bill. At the same time, in compliance with your request, and with the cognizance of my colleagues on the Committee, I willingly take this opportunity of expressing my individual opinion thereon.

The small extension of Native jurisdiction which will be the immediate and necessary effect of the Bill is in my opinion unobjectionable, and, under a strict and watchful Government, the gradual admission of a moderate proportion of Native gentlemen of adequate education and training, and imbued with the instincts of law, would not be a measure attended with danger. If this were all that the Bill provided for, it would in my opinion receive extensive support among the European community. But its scope is much greater.

The 1st section disqualifies European British subjects, not Magistrates of the First Class, from being entrusted with the powers of Justices of the Peace in the Mofussil. This provision, which does not appear to be contemplated in the Statement of Objects and Reasons, seems to be an unnecessary accompaniment to the amendments embodied in Sections 3, 4, and 5. It will lower without any compensating advantage the status of European British subjects, and deprive them of the sense of responsibility which such status inspires. It will also have the probable effect of depriving isolated districts of the country, thinly sprinkled with Europeans, of an important moral guarantee for public order and stability. In case of occasions arising for the use of force in such districts, either to preserve the peace or in the interest of justice, circumstances readily suggest themselves under which the counsels of a European, who in his capacity of Justice of the Peace had a right to be heard, would be of the greatest service in restraining the impetuosity or strengthening the hands of the Native authorities. Two recent instances of coercion, the Junágad massacre and the expulsion of Beluchi vagrants from the Bhusával Railway Station, sufficiently illustrate Native impetuosity on the one hand and British coolness and self-restraint on the other.

It appears from the same section that the exercise of jurisdiction over European British subjects is to be extended not only to Natives who have received the training considered necessary in the case of European Civilians, but to those also who may be nominated without competition under the new Native Civil Service Rules, and to Native Uncovenanted Servants, of whose qualifications there is no statutory guarantee. Under these circumstances stronger grounds than have yet appeared are in my opinion necessary to persuade Europeans to surrender without protest what they have always considered as a cherished right—the privilege of being judged by their own countrymen. As the administration of justice has always been regarded as one of the most sacred functions by Englishmen, it is naturally claimed that the guarantees for

its faithful exercise should not be relaxed. It is said that if a judge is qualified to administer justice to Natives, he is qualified to judge Europeans. But this is to proceed on the premature assumption that the general administration of justice in this country has been purified and elevated up to the English standard. Even were it possible that in times of tranquillity little or no miscarriage of justice should arise, yet any public excitement could not fail to react to the prejudice of justice on minds which had not received the proper legal training, like those of non-competition Native Civil Servants.

For the reasons stated shortly above, I venture to think that the Bill should not pass in its present form. It seems right to grant extension of jurisdiction to Native Magistrates, but this ought to proceed step by step, both as regards the spheres or localities of their jurisdiction and the class of officers to whom it is granted. It seems as fallacious to bulk the whole of the Mofussil together for the purposes of this Bill as it is to treat all Native Civil Servants, Covenanted and Uncovenanted, as one class.

I have, &c.

(Signed) D. S. KEMP,
Chairman, Bombay Trades' Association.

No. 6.

LETTER from the CHIEF SECRETARY to GOVERNMENT, Bombay, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 3621, dated 29th May 1883).

In continuation of my letter No. 3232,* dated the 14th instant, I am directed to forward, for the information of the Government of India, the accompanying copy of a minute by the Hon. Mr. Justice Latham, Acting Judge of Her Majesty's High Court of Judicature at Bombay, dated the 21st idem, containing his opinion on the provisions of the Bill for amending the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

(Signed) C. GONNE.

MINUTE by the Hon. Mr. Justice LATHAM on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of Jurisdiction over European British subjects.

If the matter on which our opinions are desired had been in the same position in which it was when I wrote my minute of last year, I should have been prepared to adhere entirely to the opinion expressed in that minute. That is, I should have thought it desirable to place all members of the Covenanted Civil Service, European or Native, on the same footing as regards their power of trying European British subjects, and should have entertained no objection to doing away with the special provisions of Chapter 33 of the Code of Criminal Procedure.

Unfortunately the matter is by no means in the same position as last year. The introduction of a Bill going beyond the proposals then laid before the Judges of this Court, and having an operation even wider in appearance than in fact, combined probably with circumstances not connected with this particular Bill, have created what I can only call a panic among the European British subjects who are the persons principally affected by the provisions of the Bill; and that panic has led to the use of violent language and the development of race animosity on the part of Europeans and Natives alike. At the present moment it is impossible to conceive of a more burning question to be dealt with by legislation; and yet it must be so dealt with, or the Legislature appear to be overborne by popular clamour.

Now, while I have little sympathy with the panic and none with the passionate language and excited feelings which the Bill has occasioned, I feel that the existence of that panic and those feelings are matters which deserve the attention of the Legislature. An improvement in criminal procedure may be

too dearly bought at the price of placing the whole or a large part of the class who are the potential subjects of that procedure in opposition to the criminal law and the authorities who enact or administer it. And I should be disposed to confine the present alteration of the law within the narrowest limits compatible with the maintenance of the independence of the Legislature and its refusal to yield to mere agitation. I would sacrifice some degree of ideal improvement to the more important object of preventing or minimising a conflict between the sentiments of an important section of the community and the provisions of the law.

The provisions of the Bill which, in my opinion, should at present become law, are—

(1.) Section 2, making Sessions Judges and District Magistrates *ex officio* Justices of the Peace.

(2.) So much of Section 1 as allows the appointment of Native members of the Covenanted Civil Service to be Justices of the Peace.

I should advise the remaining parts of the enabling provisions of the Bill to be dropped, excepting, of course, such alterations of the Code of Criminal Procedure as are necessary to give effect to (1) and (2).

With regard to the disabling provisions of the Bill, which have excited less attention, but to me seem fully as important as its enabling provisions, I would urge their being dropped altogether. I can see no good reason why Government should deprive itself of the services of a class of Europeans who can satisfactorily discharge the duties of Justices of the Peace, and to whom the persons brought before them can have no objection. I think that the attainment of a certain amount of symmetry in a branch of law for the most part unsymmetrical is an utterly inadequate reason for so doing. And I am certain that the administrative inconvenience which will be hereafter caused by the loss of the services of Europeans not falling within the classes enumerated in Section 1 of the Bill will far outweigh the convenience to result from the gain of the services of such Natives as may be selected from those classes.

With regard to the two points suggested for our consideration by the Government of Bombay, I would say as follows. I cannot approve of giving the right to a European accused to claim a Jury, although the Jury system may not have been introduced into the district in which his trial is held. Whilst I believe that an impartial Jury presided over by a competent Judge is the very best tribunal for the trial of a criminal charge, I am convinced that a partizan Jury is the very worst of such tribunals. The most scandalous trials on record, as the English State trials of the 17th century, and those during the Reign of Terror, were so tried. And I fear that in outlying districts of the Mofussil, if the case tried were that of a European charged with an offence against a Native, the jury would be certain to be partizan, and not the less so because it would probably contain partizans on both sides. I must also disapprove of the proposal to constitute special Benches composed of a European and a Native magistrate for the trial of European British subjects, as this would be to set up a new difference when the desire is to remove old differences; and there would also be danger of an outcry in case of disagreement between the members of the Bench so composed.

In conclusion, I would observe that over 14 years' experience as Counsel and Judge in India has convinced me that the real administrative inconvenience connected with the trial of European British subjects in the Mofussil arises from the very restricted powers of punishment which the Sessions Judge has in such cases, and the consequent necessity for the transmission of accused and witnesses to the High Court in matters of no great importance. In the present excited state of feeling it would not be wise to attempt to deal with a subject yet untouched; but I think that at a calmer time this is the direction in which it is most important to modify the existing law.

(Signed) F. L. LATHAM.

The High Court, Bombay, 21st May 1883.

LETTER from the CHIEF SECRETARY to GOVERNMENT, Bombay, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 3,731, dated 2nd June 1883).

In continuation of my letter No. 3621, dated the 29th ultimo, I am directed to forward, for the information of the Government of India, the accompanying copy of a minute by the Hon. Sir Charles Sargent, Kt., Chief Justice of Her Majesty's High Court of Judicature, Bombay, dated the 10th idem, containing his opinion on the provisions of the Bill for amending the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

(Signed) C. GONNE.

MINUTE by the Hon. the Chief Justice (Sir CHARLES SARGENT, Kt.) on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

I entirely approve of the principle of the Bill under consideration. I think that the time has arrived when the disability of the Natives of India to exercise original jurisdiction over British born subjects outside the Presidency towns as declared in sections 443 and 444 of the Criminal Procedure Code of 1882 ought to be removed. My reasons for arriving at that conclusion have been already stated by me in a minute addressed to the Government of Bombay in the course of last year, and I venture to repeat them on the present occasion :—

“ I think the distinction in question, which is a highly invidious one, should be abolished. The only grounds, I apprehend, on which it has ever been sought to justify the withdrawal of Europeans from the jurisdiction of Native criminal tribunals are that it offends the feelings of a European as a member of the governing race to appear before a Native on a criminal charge, and that some regard is due to the pride of race; that their being amenable to Natives in criminal matters lowers Europeans in the eyes of the masses and weakens their authority, and, lastly, that a European is not likely to meet with justice at the hands of Native Magistrates and Judges. As the law pays no regard to these considerations in Presidency towns, where the Magistrates may be either Europeans or Natives, and indeed, in this town of Bombay, have been, since I have been in India, for the most part Natives, the real question seems to be, whether there are special circumstances in the case of a European residing in the Mofussil which render it advisable to retain the distinction. Now that such may have existed in other periods of our Indian history, when the position of a European in the Mofussil was a very isolated one, I can well believe, but at the present day, when owing to the speedy communication between the Presidency towns and all parts of the Mofussil where Europeans are likely to be met with, the distinction between the Mofussil and Presidency towns is fast disappearing for nearly all purposes, I cannot think there can be any sufficient reason for the distinction in question. As to fitness and legal attainments, the Native members of the Civil Service can surely compare favourably with the Native Magistrates in Presidency towns who too often have had no legal training whatever. And as to Europeans not having justice meted out to them by Native Magistrates or Judges, my experience of Presidency Magistrates would lead to quite the contrary conclusion.”

Whilst entertaining this view as to the general question, I am fully sensible as to the necessity of confining the jurisdiction over British born subjects to those Natives whose training and antecedents in the judicial service afford a guarantee of fitness, moral as well as intellectual, to deal with the somewhat delicate questions which may be expected to call for their decision.

The provisions of the Bill, so far as it depends on the written law, appear to me to adequately fulfil the above condition. If the Bill becomes law, only those Natives will be able to exercise the jurisdiction who being members of the Covenanted Civil Service or Assistant Commissioners in Non-Regulation

Provinces or Cantonment Magistrates have been invested with the powers of a First Class Magistrate, and it ought to be impossible if the local Governments exercise but ordinary care in their selection from this limited and select class for any Native to be appointed who is not deserving of the confidence of the European community.

(Signed) C. SARGENT.

10th May 1883.

No. 8.

LETTER from the CHIEF SECRETARY to GOVERNMENT, BOMBAY, to SECRETARY to GOVERNMENT of INDIA, Legislative Department. (No. 3897, dated 11th June 1883).

IN continuation of my letter, No. 3855,* dated the 8th instant, I am

directed to forward, for the information of the Government of India, copy of a minute by the Hon. Mr. Justice Nánábhái Haridás, Acting Judge of Her Majesty's High Court of Judicature, Bombay, containing his opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

* Printed as Paper under No. 64.

(Signed) C. GONNE.

MINUTE by the Hon. Mr. Justice NÁNÁBHAI HARIDÁS on the Bill to amend the Criminal Procedure Code, 1882, so far as it relates to the exercise of Jurisdiction over European British subjects.

I AM unable to agree with the Acting Chief Justice in his opinion on this Bill. He denies "that a Native Judge or Magistrate in the Mofussil, whether a Civil Servant or not, is fit to try a European British subject."

2. In considering this matter one must not overlook existing facts. Every such Judge or Magistrate in the Mofussil already has power to try Frenchmen, Germans, Italians, Greeks, Russians—in short all Europeans, except those who are British subjects. For years he has exercised it in a perfectly satisfactory manner. I am not aware of any instances in which he has shown his incompetence in the exercise of it. In principle what difference is there between the two classes of Europeans that renders such a Judge or Magistrate competent to try one of them, and at the same time incompetent to try the other? Besides, Native Magistrates in the Presidency-towns have for years possessed the power of trying both classes of European offenders. If competent to exercise such power in the Presidency-towns, it is difficult to see how they become incompetent when transferred to the Mofussil, and competent again when re-transferred to the Presidency-towns. The present state of the law on this subject is utterly indefensible. A judge's fitness for his post does not depend in the least upon the colour of his skin, or upon the nationality of the prisoner to be tried, or upon the place where the Court is held; and any invidious race distinctions ought not to be allowed to disfigure the Statute Book a day longer than may be absolutely necessary.

3. If a fear is really entertained in any quarter that the very presence of a Native on the Bench will lead to an increase in the practice, said to be very common in this country, "of bringing false charges upon suborned evidence against persons of a different race whom it may be desirable to injure or get rid of," such fear is, to say the least, most unreasonable. The presence on the Bench of Native Magistrates in the Presidency-towns has not led to any such result. There are Hindu Magistrates in the Mofussil daily trying cases in which the accused are Mahomedans and *vice versa*; and again there are both Hindu and Mahomedan Magistrates trying cases in which the accused are Europeans (other than "European British subjects") as well as persons of other alien races. But there is no warrant for asserting that perjury and subornation of perjury and false charges have increased there in consequence. Besides, since 1836, Native Judges in the Mofussil have, in civil cases,

exercised the same jurisdiction over European British subjects as over others. It yet remains to be discovered that those offences have increased in consequence.

4. I do not think there is much in the argument, which finds favour with some, that a Native Judge or Magistrate is incompetent to try European offenders by reason of his ignorance of European "manners, customs, and habits of thought"; and that two or three years' residence in England is not likely sufficiently to remove that ignorance in the case of a Native Civilian. This argument evidently rests on the assumption that no Judge is competent to try a prisoner with whose "manners, customs, and habits of thought" he is unacquainted. Now, can it be truly predicated of the European Judges and Magistrates, whether in the Mofussil or in the Presidency-towns, that they are acquainted with the "manners, customs, and habits of thought" of every prisoner whom they have to try? The fact is jurisdiction is not conferred at present upon this principle. It will not be difficult to find instances of European Judges, some quite fresh from England, others with even less than two or three years' residence in India, and others again, even after much longer residence, without any knowledge of a Native language or of Native "manners, customs, and habits of thought," trying Natives upon all sorts of charges. And yet who has ever thought of denying them such jurisdiction on that ground. What is perhaps of more importance is a knowledge of the "manners, customs, and habits of thought" of the Native witnesses, upon whose evidence the determination of the guilt or innocence of the accused depends; and it cannot justly be denied that, as regards that, a Native Judge or Magistrate is much better situated than any European can be.

5. As to the provisions of the Bill, I do not think they go far enough. It seems to me that, as is already the case in civil matters, the procedure of the Court in criminal matters also should be the same, whether the accused are Native subjects of Her Majesty or European subjects. There is no good reason for having special Courts or special modes of trial for the latter. All the subjects of Her Majesty must alike submit to the jurisdiction of the Courts established by Her representatives in India, and the same offences when proved in those Courts, in the ordinary way, should produce the same penal consequences irrespective of the caste of the offenders. All Her Majesty's subjects ought to be equal in the eye of the law. In the Presidency-towns the same tribunals try both classes of them, the same procedure or mode of trial obtains, and on conviction the same consequences follow. The substantive criminal law is now the same in the Presidency-towns and in the Mofussil. Why then should there be any difference in the procedure? I think with the Chief Justice (*see* his Minute of 7th June 1882) that the whole of Chapter XXXIII. of the Criminal Procedure Code may advantageously be repealed, a short enactment being passed providing that "No person shall by reason of his

Sec. 10, C. P. C. "descent or place of birth be in any criminal proceeding exempted from the jurisdiction of any of the Courts." With reference to para. 2 of the "Statement of Objects and Reasons" accompanying the Bill, it seems to me that such an enactment would more effectually settle the question now before the Legislative Council. Having regard to the progressive policy of Government, and bearing in mind how the same question as regards civil cases was settled in 1836, one may safely say that some day or other it will have to be settled in the same way as regards criminal cases also. If so it may as well be so settled now as ten or twenty years hence. The existing provisions of the law as to transfer of cases from one Court to another, appeals against convictions, suspension of sentences, and revision are amply sufficient for the protection of Her Majesty's European subjects no less than for that of Her Native subjects; and all fear of their proving insufficient for that purpose is utterly unfounded. The longer the existing anomaly is allowed to continue in deference to the unreasoning clamour now raised for its continuance the greater will be the difficulty of removing it hereafter. If the Legislature had listened to similar clamour in 1836, the law on the subject of civil jurisdiction would to this day have continued in the same unsatisfactory state as before. There was no lack then of people predicting all manner of evil consequences from the passing of what is known as the Black Act. Half a century's experience of its working, however, has shown them to be false prophets, not one of those consequences having followed. Who can

now say that the Government then were not perfectly justified in disregarding the opposition to it? Should it, however, be deemed expedient not to go the whole length just now, the Bill may be passed at once as it stands. To withdraw it is out of the question. It would be a retrograde move, likely to produce many embarrassments in future.

6. With reference to the suggestions contained in the Chief Secretary's Letter, dated 17th April 1883, it seems to me that, in trying to remove one invidious race distinction by legislation, care should be taken to avoid, if possible, the creation of another. All trials before a Court of Session in the Mofussil are at present either by jury or with the aid of assessors, whoever the accused may happen to be. (Section 268, Criminal Procedure Code). If Europeans prefer the former mode of trial, the Natives are by no means opposed to it; and Government, having the power (Section 269 of the same Code), may at once direct such mode to be adopted in all cases. In this way they will be conferring a boon which all Her Majesty's subjects will equally value. They will, at the same time, be removing another existing anomaly—different modes of trial in the Presidency-towns and in the Mofussil. Education has made such progress in every part of India within the last thirty years as to justify a hope that no difficulty will be experienced in finding a sufficient number of competent persons to act as jurors, wherever a Court of Session is held. I am opposed on principle to the creation of special tribunals for the trial of any one class of Her Majesty's subjects; but if Government deem it expedient to do so, there is no necessity for any new legislation on the subject. They already have the power, under Sections 15 and 16 of the Criminal Procedure Code, to direct two or more Magistrates in the Mofussil to sit together as a Bench, and to make rules for the guidance of such Benches.

(Signed) NANABHAI HARIDAS.

June 2, 1883.

No. 9.

LETTER from the CHIEF SECRETARY to GOVERNMENT, BOMBAY, to SECRETARY to GOVERNMENT of INDIA, Legislative Department. (No. 4005, dated 14th June, 1883).

IN continuation of my letter No. 3897,* dated the 11th instant, I am directed to forward, for the information of the Government of India, copy of a minute by the Hon. Mr. Justice Pinhey, Judge of Her Majesty's High Court of Judicature, Bombay, containing his opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

* Printed as Paper under No. 8.

(Signed) C. GONNE.

MINUTE by the Hon. Mr. Justice PINHEY on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of Jurisdiction over European British subjects.

Just a year ago we were asked by the Government of Bombay to state our opinion, "as to whether all members of the Covenanted Service, whether European or Native, ought not to be placed on the same footing, and whether the distinction which now exists between the two classes in regard to their powers of trying Europeans should not be abolished."

2. I had long ago wished to see this distinction abolished, and I, therefore, unhesitatingly initialed a minute by the Chief Justice (Sir C. Sargent) answering the Government reference to this effect.

3. Reading again now the minute of Sir C. Sargent by the light of later experience, I regret that I initialed it; because, although I agree with the whole of that part of it which answers the Government reference, the last para. of that minute expresses an opinion on the general question of the propriety of subjecting all European British subjects to the jurisdiction of every Magistrate—whether European or Native—a question about which our opinion was not asked.

4. I am of course still of opinion that it is neither necessary nor just to make any distinction between the European and Native members of the Covenanted Civil Service, or to refuse to the latter power to deal with European British subjects in the exercise of their criminal jurisdiction.

5. When the Secretary of State for India advertises yearly that so many appointments in the Covenanted Civil Service will be given away by open competition, he makes no exception or distinction as to Natives of India. If a Native of India is a successful competitor, he receives his appointment subject to no other condition than those which his European competitor has to accept. It seems to me unjust that a Native Covenanted Civilian, when he arrives in India, should find his rights and privileges cut down, merely because he is a Native of India, or that he should be subjected to any disability from which his European fellow-competitor is exempt.

6. And the distinction is in my opinion as unnecessary as it is unjust. The European and the Native pass the same test. You have, therefore, the same guarantee for the education and ability of each. You have the same guarantee for the moral character of the one as of the other. No Native of India ever has got or ever will succeed in getting, into the Covenanted Civil Service without residing some years in England, and consequently mixing in European society and acquiring a considerable knowledge of the manners and customs and habits of thought of Europeans.

7. If then the Bill had gone no further than to do away with the distinction between European and Native members of the Covenanted Civil Service, so far as the exercise of criminal jurisdiction is concerned, it would have had my unhesitating and hearty support, but it goes much further; and, so far as it goes further, I think it unnecessary, impolitic and inopportune. Moreover, I object to it nearly as much for its disabling and as for its enabling effect: for not only will it enable Government to give power to Natives of classes (*b*) and (*c*) to deal with European British subjects charged with criminal offences, but it will in future prevent Government from giving such power to Europeans who are not members of the Covenanted Civil Service, but who are now invested with the power. I refer to the class of European officers, who are called in the Mofussil of this Presidency City Magistrates and to such Deputy Collectors as are Europeans. Members of this class are to be found at Karáchi, Poona, Belgaum and other large towns.

8. I need say no more of the Bill, so far as it will disenable Europeans who are not Covenanted Civilians from dealing with Europeans charged with offences. Nor need I say anything of class (*d*) Cantonment Magistrates: for in this Presidency at least these are always (I believe) European British subjects, generally Military officers.

9. Before I state my objections more fully as to classes (*b*) and (*c*) I wish to express it as my opinion, that the unreasonable and unseemly clamour which has been raised against the Bill by a portion of the European community in India has been raised in consequence of an entire misconception of the scope of the Bill. It seems to me that the European community, without any careful study of the Bill, have jumped at the conclusion that if the Bill becomes Law every European will be liable to the jurisdiction of any, and every, Native Magistrate in respect of any, and every, offence with which he may be charged. The Bill of course does not contemplate any such extension of the criminal jurisdiction of Native Magistrates generally.

10. Besides class (*a*) Covenanted Civilians (all of whom should in my opinion have the same jurisdiction as to persons), and class (*d*) Cantonment Magistrates (all of whom, in this Presidency at least, are European British subjects), the Bill proposes to enable Government to give jurisdiction over European offenders to two classes of First Class Magistrates, class (*b*) members of the Native Civil Service constituted under the Statute 33 Vict. cap. 3, and class (*c*) Assistant Commissioners in non-Regulation Provinces, who may be either European British subjects or Natives of India. As to such Assistant Commissioners as are European British subjects, the Bill would not alter the law that now exists. There are no Assistant Commissioners, such as the Bill names, either European or Native, subordinate to the Bombay High Court. Whatever be the objection to conferring on Native Civilians criminal jurisdiction over European British subjects, the same objection would, in my view, exist in the case of Native Assistant Commissioners. I shall, therefore, confine the rest

of my remarks to class (b) Native Civilians appointed (by nomination and not by competition) in this country.

11. I have already said that I think the extension of the criminal jurisdiction of Native Civilians unnecessary, impolitic and inopportune. I will state my reasons for so thinking as shortly as I can.

12. *Unnecessary.*—The proposed change in the law has not been called for either by the persons on whom it is proposed to confer the jurisdiction, or by the persons over whom it is to be exercised. It is a matter of notoriety that the latter strongly object to it. I do not remember ever hearing of a case in which justice was either delayed or frustrated by reason of there being no European Magistrate within reach, when a charge was brought against a supposed European offender. Mr. Gupta, of the Bengal Civil Service, had a grievance and gave expression to it. The Bill, so far as I approve of it, would do away with this grievance and rightly so. No other Native has asked to be given power to try Europeans, and so far as I am capable of forming an opinion, very few Natives, if any, would wish to have to try Europeans.

13. *Impolitic.*—The new Native Civilians nominated in this country, so far as I have had an opportunity of testing their capacity, are inferior to the Covenanted Civilian, either European or Native, in ability, in education, even in the power of writing simple English. They have never been in English society. They have never associated on terms of equality (most of them have not associated at all) with English men and women. As they have never “crossed the black water,” you have no test of their moral courage. As they are appointed without examination, you have no guarantee for their education beyond the poor one afforded by departmental examinations. They are not appointed on their own merits, but generally because their fathers are distinguished servants of Government or prominent citizens, or else because their fathers or uncles are greatly esteemed by some one in or out of the Government service, who has influence enough or perseverance enough to get his nominee appointed a Civilian. I know as a fact that the Native community generally are greatly discontented with the present mode of nominating Natives to the Civil Service. Can it be politic to give to such as these a new power, a new jurisdiction over a proud and hitherto dominant (and perhaps it may justly be added domineering) race? I cannot think so. It is easy of course to be wise after the event, but I think my opinion on this point derives confirmation from the outburst of passion (Native as well as European) which the introduction of the Bill in the Legislative Council has produced; albeit Native and European alike have misconceived the scope of the Bill. Moreover, it was not a mere transient outburst of passion. The discussions that have taken place in the press and elsewhere during the pendency of the Bill have produced a state of race antagonism, such as I have never known since the terrible events of 1857.

14. *Inopportune.*—Of course from what I have said above, I must consider that portion of the Bill to which I object inopportune. But I do not say, and I do not think, that as time goes on the race distinctions, which it is the object of the Bill to modify, may not be modified as they have already been modified from time to time. But the method of recruiting the Native Civil Service must first be modified. The race antagonism which the inopportune introduction of this Bill has excited must be allowed to subside. It was decreasing rapidly before the Bill. It will again decrease if the Bill be altered to the extent that would be necessary, in my opinion, to make it a just and a wise Bill.

15. I cannot close these remarks without noticing that it appears to me that some of my colleagues in their observations appear to have fallen into the popular error of considering the scope of the Bill much wider than it is.

(Signed) ROBERT HILL PINNEY.

The High Court, Bombay,
6th June 1883.

No. 10.

LETTER from the CHIEF SECRETARY to GOVERNMENT, BOMBAY, to SECRETARY to GOVERNMENT of INDIA, Legislative Department. (No. 4026, dated 15th June 1883).

IN continuation of my letter, No. 4005*, dated the 14th instant, I am

* Printed as Paper under No. 9. directed to forward in original, for perusal if desired, 46 opinions of the officials consulted by this Government on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and to request that they may be returned when no longer required.

2. I am to state that copies of the opinions of the Commissioners of divisions have already been transmitted to the Govern-

† Printed as Paper under No. 5. ment of India with this Government letter No. 3232,† dated the 14th ultimo.

3. The following is an analysis of the opinions of the officials consulted :—

In favour of proceeding with the Bill.	For not proceeding with the Bill.	In favour of confining the Jurisdiction to District Magistrates and Sessions Judges.	In favour of confining the Jurisdiction to competition Civilians.	Suggesting some sort of Compromise.	Approving of the Principles of the Bill, but thinking its production premature.	Suggesting some Modifications.	Total.
4	27	5	2	3	3	2	46

(Signed) C. GONNE.

Enclosures referred to in preceding Letter.

LETTER from DISTRICT JUDGE, BELGAUM, to SECRETARY to GOVERNMENT, BOMBAY. (No. 645, dated 13th April 1883).

I HAVE the honour to acknowledge Government Resolution No. 2258, dated 2nd instant, calling for my opinion on the proposed amendment of the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. I have again considered my letter, No. 1072, dated 28th June 1882, and I see no reason to alter the opinion expressed therein. No doubt the amendment proposed has caused a ferment amongst Englishmen in other provinces of British India, but in the Belgaum district there are only three aged pensioners of the British Army and two English missionaries other than public servants in civil and military employ, and I have had no opportunity of ascertaining what the feeling is amongst unofficial European British subjects in respect of the amendment of the Criminal Procedure Code.

3. Assuming that Englishmen throughout British India are opposed to the alteration of procedure, I do not think the fact is any reason for postponing the amendment, so far as the classes named in the Statement of Objects and Reasons are concerned, though it may be, for the present, justification for not extending the Act to all Magistrates, First Class, as I advocated.

4. I believe Native Magistrates generally are quite as trustworthy and impartial as are Magistrates in Malta, yet Englishmen in Malta are subject to the jurisdiction of Native Magistrates, and I believe with as little satisfaction, notwithstanding the Maltese magistrates are Europeans, as they show to Native Magistrates in India (though I am bound to state that in Malta Maltese, not English, law is in force). The truth is Englishmen are not as free from race-prejudices as they fancy themselves to be, and this, too, while other races think Englishmen somewhat aggressive.

5. I am not aware that Englishmen are exempted from the jurisdiction of Native Magistrates in Ceylon, the civil service of which is, I believe, very

evenly shared by Cingalese and Englishmen ; and, before yielding to the clamour of Englishmen in India, as evidenced by recent newspaper reports, I would suggest references to the practice in the different dependencies and possessions of Great Britain throughout the world ; and whatever the result is, let the general policy of England govern the procedure in India. Neither Englishmen nor Natives of India could then have any just cause of complaint.

(Signed) C. P. H. SHAW.

- LETTER from DISTRICT MAGISTRATE, SATÁRA, to COMMISSIONER, CENTRAL DIVISION. (No. 2034, dated 10th April 1883).

I HAVE the honour, with reference to Government Resolution No. 2258 of the 2nd April 1883, to state that I have nothing further to add to my opinion already contained in my letter No. 2990, dated the 19th May 1882, which was to the effect that the power to deal with Europeans is vested solely in Justices of the Peace, and, so that Government kept the power of investiture in their own hands only to be exercised specially and in favour of men who are eminently fit, I could see no objection to allowing Native officials to deal with Europeans, in the same manner as they now deal with them in Bombay.

(Signed) W. R. PRATT.

- LETTER from DISTRICT MAGISTRATE, KHANDESH, to SECRETARY to GOVERNMENT, BOMBAY. (No. 2455, dated 1st May 1883).

I HAVE the honour to reply to Government Resolution No. 2258 of the 2nd ultimo, on the amendment of the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects.

2. It would be a mere waste of time to endeavour to ring one more change out of the arguments that have been used at various times for and against the measure.

3. I shall content myself with giving my reasons in favour of the amendment.

4. About the abstract justice of the principle on which the amendment is based there can be no question, and the change is therefore inevitable sooner or later. Such being the case, it is good policy to introduce it while the number of Native Magistrates qualified to receive the new powers at the hands of Government is small.

5. The change of the law does not confer the enlarged jurisdiction on all, or even a class of Native Magistrates, but gives Government the power of conferring the jurisdiction on individual Native Magistrates. Of course Government would not appoint a Native as District Magistrate or Sessions Judge unless they were assured of his fitness for the duties which this Act will impose upon him. There is thus a guarantee that only fit persons shall be enabled to try European British subjects.

6. It is useless to indulge in generalities about the unfitness of Natives for the new jurisdiction when we have seen Natives occupying the places of Chief Justice of the High Court in Calcutta and Judge of the High Court in Bombay. There will of course be a heavy responsibility on Government regarding the selection of fit persons for the positions of Justices of the Peace and the offices which carry that distinction. The terms on which the Magistrate lives with Europeans, his equals in position, will necessarily come into consideration in each case. A friendly and unprejudiced association with Europeans would seem to be a necessity to a Native Magistrate understanding the motives and receiving the confidence of all classes of Englishmen. I know certainly one Native Magistrate who fulfils this condition, though he belongs to a Native State.

7. I do not feel bound to discuss the various arguments that have been used in opposition to the Bill, and will summarize my reasons for supporting it as follows :

- (a) The abstract justice of the measure.
- (b) The inevitable necessity of adopting such a measure sooner or later.
- (c) The good policy of doing so at once.
- (d) The fact that the measure allows for strict control by Government over individual appointments.
- (e) The fitness of a few Natives at the present moment not being doubtful.

(Signed) H. T. OMMANNEY.

LETTER from DISTRICT JUDGE, KANÁRA, to ACTING CHIEF SECRETARY to
GOVERNMENT, BOMBAY. (No. 1, dated 18th May 1882).

WITH reference to your Letter No. 2985, Confidential, dated the 13th instant, I have the honour to state that, in my opinion, all the members of the Covenanted Civil Service, whether European or Native, ought to be placed on the same footing in regard to their powers of trying European British subjects. There is no valid reason whatever why the Native members of the Civil Service who have been to Europe and have qualified themselves to take their places with the European Civil Servants should not be allowed to exercise all the functions which the European members of the service exercise. It seems improper and unreasonable to say that a Native Civilian who had attained to the position of a Sessions Judge was not competent to try a European British subject whom a Native Justice of the Presidency-town was competent to try, or that a Native Civilian who is fit to be entrusted with the entire charge of a district should be considered unfit to hold the preliminary trial of a European criminal, particularly when his European assistant would be competent to hold such a trial. The distinction which now exists between the two classes of civilians in the matter under consideration is invidious and unjust, and ought, in my opinion, to be done away with.

(Signed) S. TAGORE.

LETTER from SESSIONS JUDGE, KANÁRA, to CHIEF SECRETARY TO GOVERNMENT,
BOMBAY. (No. 552, dated 1st May 1883).

WITH reference to Government Resolution, No. 2258 J.D., dated the 2nd April 1883, inviting opinion on the provisions of the Bill to amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to refer Government to my letter No. 1, dated the 18th May 1882, on the subject, and to respectfully repeat my opinion that the law, which creates a distinction between Native and European members of the Civil Service as regards jurisdiction over European British subjects, is indefensible in theory, inconvenient in practice and radically unsound. If the principle of admitting Natives of India into the Covenanted Civil Service is admitted, it cannot with any show of justice be contended that the Native Civil Servants should not be placed on a footing of equality with the European members of the Civil Service. It must be remembered that the only persons who will be entitled *ex officio* to try European British subjects in the Mufassal under the proposed Act are District magistrates and Sessions Judges, men who must necessarily be civilians of 12 or 15 years standing, men who must, from their very position and long experience, be presumed to be fully acquainted with the habits and customs of their European fellow-subjects and with the rules of etiquette obtaining among them. If such men are too incompetent to be invested with powers to sentence a European to a few months' imprisonment, it would certainly be the height of folly to entrust into their hands the life and liberty of millions of our fellow-subjects, who, dark-skinned though they be, are as much entitled to claim the protection of law and justice as the best born European British subject. It must further be remembered that the actions of these Magistrates and Judges will be keenly watched and severely criticised by the European community whenever a case against the European British subject is taken before them. The argument based on the absence of enlightened public opinion in the Mufassal no longer holds good. As observed by Dr. Hunter in his speech in course of the memorable debate on the Bill—"Englishmen in the interior " have now the means of expressing the public opinion of their class with " such promptitude and with such force as to constitute the strongest possible " guarantee against the abuse of magisterial powers whether vested in European " or Native hands." It has been alleged that the question whether a European criminal ought to be tried by a Judge of his own race is a matter of importance to the criminal alone, and that Natives have no *locus standi* in respect of the question of jurisdiction. Here one important circumstance is ignored, namely, the administrative inconvenience likely to be caused by the operation of the present law. When the Civil Service has been thrown open

to the Natives of the country, there is every prospect of some of them being put in charge of sub-divisions and even of districts. Under the existing Procedure Code, this means that there are to be large portions of the country within which Europeans may commit even the gravest crimes with impunity, for the simple reason that their trials can never take place but in Courts far removed from the scenes of occurrence. To avoid inconvenience of this kind it would be necessary to exclude Native Civilians, as Magistrates and Sessions Judges, from the advancing districts into which British enterprise comes, and to condemn them to backward or remote districts, where they will have less opportunity of distinguishing themselves or proving their fitness for higher offices. In other words, "Government will have to regulate its appointments not by the merits of an officer nor by his general fitness for a district, but by his power to deal with a small exceptional class of cases occurring within it." The present step is a small and cautious one. The only alteration proposed is this. It is proposed "to substitute, for the disqualification arising from race, a qualification depending on tried personal fitness." "It amounts to this," as stated by Sir Arthur Hobhouse, the late Law Member of the Viceregal Council, in his letter to the *Times*, "that certain Government officials of long standing and of distinguished capacity shall not, because they are of pure Indian blood, be precluded from exercising over Europeans the very carefully guarded amount of jurisdiction which is vested in other Provincial Magistrates." The same distinguished authority observes—"I cannot conceive that Europeans will be placed at any disadvantage on account of the partiality of a Native Judge, or that a Native Judge will be more prone to receive, or less quick to detect, false accusations than an English or half-caste one." Indeed, it is difficult to understand what greater chances there are of miscarriage of justice in the trial of a European than that of an Indian criminal before a Native Magistrate, when the witnesses to be dealt with in both cases must belong to the same nationality, and the evidence to be sifted must present the same general features. The difference of nationality of the accused cannot reasonably be supposed to make any difference in the result, whether the trying authority be a European or a Native. The opposition to the proposed amendment, I submit, rests on no solid ground whatever, and is not justified by the result of concessions already made, in the face of similar clamorous opposition to the dictates of reason, justice, and sound policy. The Black Act of 1835 first subjected European settlers in the interior to the same Civil tribunals as the Native. That Act has now been in operation for nearly half a century, and no complaints are heard as to its working. Native Magistrates in the Presidency-towns try European British subjects without demur. Why a different result should be feared from the very cautious proposals for conferring criminal jurisdiction on certain specially selected Natives it is not easy to conceive.

(Signed) S. TAGORE.

MEMORANDUM from MAGISTRATE, SHOLAPUR. (No. 1815, dated 9th April 1883.)

WITH reference to Government Resolution No. 2258, dated 2nd instant, Judicial Department, the District Magistrate of Sholapur begs to state that, with all deference, he would now wish to modify the opinion expressed in his reply to Government Resolution No. 2985, Confidential, of 13th May 1882. In that reply he stated that, as Native Covenanted Civilians have in other respects been placed on a similar footing with European members of the service, it would be anomalous to deny them judicial powers over European British subjects. This anomaly still exists, but, after a full consideration of the recent discussion of the question in the public prints and of the state of public feeling therein displayed, the undersigned is strongly of opinion that the measure should be abandoned.

(Signed) G. WARRINGTON.

MEMORANDUM from ACTING COLLECTOR and DISTRICT MAGISTRATE, AHMADNAGAR.
(No. 2539, dated 11th April 1883.)

THE Acting Collector and District Magistrate of Ahmadnagar begs, in reply to the reference from Government as per margin, to submit a copy of a memorandum received from the Second Assistant Collector, Mr. P. C. Snow, of the Civil Service.

2. Since writing on this subject last year, the views of the undersigned have become somewhat modified on the subject, in consequence of his perusal of the objections to the proposed alteration in the Jurisdiction Bill by Sir FitzJames Stephen, Mr. Justice Jackson, and the Bombay Chamber of Commerce.

3. The undersigned now entirely agrees with the Bombay Chamber of Commerce in considering that in this country it is impolitic to introduce fundamental changes in the law affecting an important section of the population, unless such changes are justified by an urgent necessity, which is not now the case.

4. It is indisputable that, in this country, false complaints, backed up by false testimony, are far more common than in Europe or other countries. An instance has recently occurred in this district of such a case, where all the local bar were so far interested in the prosecution that no pleader at Ahmadnagar would undertake the defence of the accused. This was because it was a caste-dispute—"Bráhmaṇ against Native Christian"; and in such cases no sympathy can, as a rule, be expected from the local bar up-country, who are mostly Bráhmaṇs. There are, doubtless, some glorious exceptions, who are not at all likely to be won over by caste-feeling, intimidation or persuasion to act in the least contrary to justice and fair play; but, as laws are generally framed for the control of the majority rather than of the enlightened minority of mankind, it appears desirable to limit the trial of Europeans by Natives to the Presidency-towns, where there are so many lawyers of different nationalities and persuasions that it will be impossible for the entire bar to be closed against any particular accused person. The above remarks are directed to the ordinary pleaders in a Mufussal Court rather than to the Bench of Native Magistrates; but they come from the same class of people, though in all probability a Native Magistrate, who has attained to the position of a District Magistrate or Judge, is better educated than the ordinary pleader. The question, however, at issue is, what is the public opinion of his class and what are the principles which guide his inmost thoughts? If these last are far higher and purer than those of ordinary Hindus, such an officer (if he be possessed of firmness sufficient to decide justly no matter what influence may be brought to bear upon him) is, no doubt, qualified to try Europeans. It has been suggested that Native Magistrates would be more liable to acquit Europeans, knowing the prejudices or opinions against investing them with powers to try them at all. This is equally an argument against investing them with such powers, where the only qualifications of the Court are the ability to see on which side the truth is, whether with the prosecution or defence, and an unswerving determination to administer pure justice no matter what the consequences.

(Signed) J. ELPHINSTON.

MEMORANDUM by SECOND ASSISTANT COLLECTOR, NAGAR (dated 10th March 1883).

I do not think the proposed change a good one, and imagine that the Bill in question would, instead of removing an anomaly, create several. Thus, for instance, if the proposed amendment had become the law of the land, it is most probable that cases would be constantly withdrawn from a Native Magistrate who ought to try them. This view of the case has been frequently quoted, the power of withdrawal, when necessary, has been dwelt upon, as one of the reasons why the proposed changes are unobjectionable. But such a state of things would appear to constitute a serious anomaly, and, moreover, as time goes on a dangerous one, inasmuch as race-jealousies would be aroused. It is useless for me to dwell at any length on a subject which has been

discussed from almost every possible point of view, so I shall merely add that in my opinion, a Native, however well educated, is absolutely unfitted to try a European. To begin with, a Native Magistrate so often decides a case not on the clear and tangible evidence before him, but on what he supposes might have happened under the circumstances set out.

Secondly, he is quite incapable of appreciating a European's motives, or what has determined his course of action in particular cases. No temporary residence in England of two or three years will cure this defect. If it were possible to get Natives who had lived with Europeans from boyhood in Europe, the case might be altered. I do not believe that the main body of the people are in the least anxious to obtain for any of their Magistrates the powers proposed by the Bill; in short, the ordinary Native Magistrate in the Civil Service would probably far sooner not try a European if he could avoid it. The position of a Native Magistrate in a Presidency-town seems to me quite different. His mind is permeated with European ways and ideas, and he has a strong European bar practising before him: under the circumstances there is little fear of a failure of justice ensuing.

(Signed) P. C. SNOW.

LETTER FROM DISTRICT MAGISTRATE, KALADGI, to CHIEF SECRETARY to
GOVERNMENT, BOMBAY. (No. 1573, dated 10th April 1883.)

WITH reference to Government Resolution No. 2258, dated 2nd instant, I have the honour to state that my reply to Government Circular No. 2985, dated 13th May last, sufficiently expresses my opinion.

2. As it was made when I was at Kaira, and I cannot give number and date, I may explain that it was to the effect that Natives selected without subjection to any tests and who had not necessarily ever been to England might be wanting in the breadth of view desirable if they were to be empowered to try Europeans.

(Signed) G. F. M. GRANT.

LETTER FROM DISTRICT MAGISTRATE, NASIK, to CHIEF SECRETARY to
GOVERNMENT, BOMBAY. (No. 1998, dated 12th April 1883.)

IN reply to Government Resolution No. 2258 of the 2nd instant, forwarding for opinion what is known as the "Native Jurisdiction Bill," I have the honour to state that I see no cause to alter the opinion already expressed in my answer to Government Resolution No. 2985 of 13th May 1882, which was in favour of the extension of jurisdictional authority over European British subjects to Native members of the Covenanted Civil Service. To this limited extent it seems to me as an official, fair and legitimate that no distinction should be admitted between Native and European officers.

2. But, looking at the matter from a politico-social point of view, I am not disposed to support the measure. In itself it is practically unimportant, and the serious disturbances it may give rise to and the strong race-animosities it may raise are far weightier and more significant than the only cause which has been urged for its adoption, namely, the removal of an anomaly.

(Signed) W. WOODWARD.

LETTER FROM DISTRICT MAGISTRATE, and AGENT, GOVERNOR, PANCH MAHALS,
to SECRETARY to GOVERNMENT, BOMBAY. (No. 1445, dated 14th April
1883.)

WITH reference to the Bill for the amendment of the Code of Criminal Procedure, I have the honour to give my opinion as follows:—

2. I think it would not be advisable to give the contemplated jurisdiction to Assistant Commissioners in the non-regulation provinces, nor to Cantonment Magistrates. It is certainly sometimes the case in non-regulation provinces that the control over those who administer the law is less strongly felt by them, and is consequently not so great a check as it would be in regulation provinces or nearer the seat of Government; and, moreover, it is often in non-

regulation provinces that the cases in which the jurisdiction could be exercised would most frequently occur. I do not see on what grounds it is proposed to give jurisdiction to Cantonment Magistrates and not to Magistrates in general. There would be created a distinction which would be an anomaly of the same kind as is to be remedied by this Bill, and the only logical course would be to pass another Act extending the jurisdiction to all Magistrates.

3. I think it would be a dangerous piece of legislation to empower Natives to try British soldiers, and that, if the law is to be made, they should be specially exempted from the jurisdiction.

4. I think, however, in view of the fierce opposition it has excited, that the Bill is a mistake altogether, and ought to be withdrawn at once to allay the excitement that its introduction has raised. It appears from the Statement of Objects and Reasons that the object of the Bill is to remove an anomaly. There are, however, many anomalies that it is best to let alone. Our rule in this country is a far greater anomaly. The contemplated change would probably affect Europeans very little, and in practice the persons who found the authority most irksome and unpleasant would be the Magistrates and Judges empowered; but, as the legislation is avowedly on a point of sentiment, is desired only by one or two individuals, is a matter of indifference to the mass of the Native population, and is bitterly opposed (foolishly it may be, but violently) by the whole of the non-official European community, it may be doubted whether it is advisable to perpetuate race-animosity, to risk the loss of European capital, enterprise, and intelligence already in the country and that might otherwise be attracted to it, and to create disaffection in a community (small indeed, but influential and of great importance to the stability of the Government) for the very unimportant result to be gained by the passing of the Act. If European capital and enterprise were to be checked by the alteration, a substantial loss inflicted on the general body of the Natives would be but poorly compensated for by a fanciful benefit to a very few.

(Signed) W. ALLEN.

LETTER FROM DISTRICT JUDGE, RATNAGIRI, TO SECRETARY TO GOVERNMENT,
BOMBAY. (No. 643, dated 13th April 1883.)

WITH reference to Government Resolution No. 2258 of the 2nd instant, Judicial Department, I have the honour to report that, in my opinion, the proposed alteration of the Criminal Procedure Code is impolitic and uncalled for.

I am quite satisfied that, if carried into effect, it will appreciably diminish the amount of English capital invested in India.

I have seen the reply of my predecessor, Mr. Baker, to the reference No. 2985 of 13th May 1882, and, as I agree with what is written in that reply I think it unnecessary to add any further remarks.

(Signed) C. B. IZON.

LETTER FROM MAGISTRATE, KARÁCHÍ, TO CHIEF SECRETARY TO GOVERNMENT,
BOMBAY. (No. 1929, dated 22nd May 1882.)

I HAVE the honour to acknowledge receipt of your circular letter No. 2985, Confidential, dated 13th instant, calling for my opinion whether the distinction which now exists (and will be continued by the new Criminal Procedure Code) between European and Native Magistrates of the Covenanted Service, in regard to their powers of trying European British subjects, should not be abolished; and with deference I offer the following remarks.

2. The proposal appears to maintain the distinction between European and Native Magistrates of the Uncovenanted Service, and merely to relieve Native Covenanted Magistrates of their disability to try European British subjects. It is not, then, that any practical inconvenience has been experienced in the disposal of complaints against European British subjects, but simply a question whether the position of Native Covenanted Magistrates should be improved.

3. At present, a European British subject being a vagrant, and not otherwise,

that is, a man of presumably low character, can be tried by a Magistrate who is not a European British subject. The proposed change, which abolishes this distinction also, is one that seems to lower the status of all European British subjects in India, and, therefore, in my opinion, it is not desirable, unless any very great compensating advantages arise from it in the other direction; and these I am not able to see.

(Signed) C. F. BOULTON.

LETTER from DISTRICT MAGISTRATE, KARÁCHÍ, to SECRETARY to GOVERNMENT, BOMBAY. (No. 1468, dated 11th April 1883.)

I HAVE the honour to acknowledge the receipt of Government Resolution No. 2258, dated 2nd instant, requesting my opinion on the provisions of the Bill, proposed by the Hon. Mr. C. P. Ilbert, to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and beg to refer you to my letter No. 1929, dated 22nd May last, in reply to Government confidential letter No. 2985, dated 13th idem.

(Signed) C. F. BOULTON.

LETTER from ACTING DISTRICT JUDGE, RATNAGIRI, to CHIEF SECRETARY to GOVERNMENT, BOMBAY. (No. 859, dated 19th May 1882.)

I HAVE the honour to acknowledge the receipt of your confidential letter No. 2985, dated 13th May 1882, in which you ask my opinion whether, with reference to Chapter XXXIII. of the new Criminal Procedure Code, all members of the Covenanted Civil Service, whether European or Native, ought not to be placed on the same footing, and whether the distinction which now exists between the two classes in regard to their powers of trying Europeans should not be abolished.

2. There are only two Native members of the Civil Service in this Presidency who entered by public competition, and, as I am not acquainted with either of them, my remarks must be based solely upon such acquaintance as I may possess of Native character. In giving reasons for the view I hold, I have no particular individual in my eye, and my remarks must not be construed as casting any reflection upon any member of the Service to which I have the honour to belong.

3. Looking at the question in the abstract, it may be urged with much force that, as all subjects of Her Majesty are governed by the same substantive law, so all should in like manner be made amenable to the same adjective law; but the points on the other side are so important as, in my opinion, to render it most inadvisable that the present distinction should be abolished.

4. The first objection which I see to the change is the very strong repugnance which will most certainly be felt towards it by the European population generally. This repugnance may be unreasonable, but it should not on that account be ignored. Discontent among the Europeans in the country might be a source of great political danger, and no such risk should be run simply for the sake of establishing a theoretical equality between Europeans and Natives. Everyone who has had opportunities of judging knows what the feelings of non-official Europeans on this point would be, and how vehemently they would resent the notion of being liable to be tried by a Native official. I cannot think that the time has yet come when their ideas on this point should be forcibly reformed by the legislature.

5. Secondly, under the new system Natives are admitted to the Covenanted Civil Service without having, as a rule, gone to England at all. Their knowledge of English manners and ways of thought are, therefore, wholly derived from books. The trammels of caste are still strong upon them; for, however much they may mix with Europeans, their domestic relations are still governed by the system in which they were born and have been brought up, so that it is but natural that they should regard any question from a narrow point of view. The effect of education has not been to break down class distinctions. An educated Native, however much he may despise the religious feelings of

the less enlightened, does not feel that those who are lower in caste are any nearer to him.

6. Of late years much has been said about offences, such as assaults, committed upon Natives by Europeans. In some of these death has ensued, and, though it has been clearly shown that the accused has not been legally guilty of anything more than "hurt," an outcry has been raised, which showed that the Native editors (who may as a rule be said to represent the educated classes) have rather dwelt upon the alleged brutality of the European than upon the legal bearings of the case. The tendency has been, in some cases, to punish Europeans in cases of this sort with far more severity than was required, or would have been used, had both the parties been of the same race. Any one going through a bazar on market days will see many petty assaults committed by Natives upon Natives, of which, especially if the aggressor has any social or official standing, no notice is taken; though analogous acts done by an European would lead to his prosecution, and a great outcry about his brutality. I feel sure that, in spite of education, a Native, if a high caste man, would vigorously and forcibly resent the indignity of a Dher's shadow falling upon him, and I fear that he would still be ready to visit heavily any infirmity of temper in an European which might lead to an assault. Similarly, a Native Magistrate would be unusually strong if he could resist the temptation of punishing an European severely, knowing that he would thereby gain the applause of the Native journalists, who belong to the same class as himself. As a rule, Native editors are pleased when an European is convicted, not because they feel any sympathy with the injured person, but because the culprit is an European.

7. Offences committed by Europeans are rare. I do not remember having had to deal with more than four in the whole of my service, three of which did not affect Natives at all; so that it may be said that the objections which I have pointed out are chimerical. But it must be remembered that, if a change is once made, it cannot be undone, and we have to look to a state of things in which Native Covenanted Civilians have no practical knowledge of English manners and ways of thought.

8. The objections to which I have referred would not be so apparent in the case of Sessions Judges as in that of Magistrates, who are, I presume, included in the term "judicial officers," used in your letter. A Native who had risen to such a position would necessarily have acquired considerable experience, and would have had more intercourse with Europeans. Besides, he would always have assessors to sit with him. But I question whether, from similar reasons, he would not be out of his element if he were called upon to hear an appeal in a case in which an European had been convicted.

9. It seems to me, too, that a great deal of what is written and urged by the so-called representatives of Native opinion has for its object the ascendancy of Bráhmans rather than the good of Natives in general. A Bráhman would think little of seeing a Bráhman muccaddum striking coolies to make them work; but he would be full of indignation against an European engine-driver who boxed his servant's ears for not having his dinner ready when he came home worn out with many hours work. No better example of the way in which Natives sometimes regard crimes can be found than in the applause which welcomed Wassudeo Balwant Phadke, after his conviction in the Puna Sessions Court. Sympathy, then, was on the side of the accused in spite of the injuries which he had done to his countrymen.

10. No equality can exist between Europeans and Natives until the latter take the lead by establishing some equality among themselves. The distinction which exists as to the jurisdiction of the Criminal Courts has caused no hardship, and its abolition may cause mischief which would far outweigh any good which could arise from establishing a theoretical equality between the two races. The Code certainly does provide some safeguard, by application to the High Court; but it is a far cry to Bombay from the outlying districts of the Presidency.

(Signed) M. B. BAKER.

LETTER FROM DISTRICT JUDGE, KHANDESH, to UNDER SECRETARY to GOVERNMENT, Bombay. (No. 510, dated 19th April 1883.)

IN reply to Government Resolution No. 2258 of the 2nd instant, I have the honour to refer you to my letter No. 859 of the 19th May last, which I addressed to the Chief Secretary to Government, Judicial Department, on the subject, while I was Acting District Judge of Ratnagiri.

(Signed) M. B. BAKER.

LETTER FROM MAGISTRATE, FIRST CLASS, AHMADNAGAR, to DISTRICT MAGISTRATE, AHMADNAGAR. (No. 82, dated 20th April 1883.)

I HAVE the honour to acknowledge receipt of your No. 2446, dated 7th instant, asking my opinion on the Bill to amend the Criminal Procedure Code so far as it relates to the exercise of jurisdiction over European British subjects.

2. The Government of India propose to remove from the Code, at once and completely, every judicial disqualification which is based merely on race-distinctions. This reform, like all other legislative reforms, must be judged not by its sentiment but by its expediency. It has hitherto been thought expedient to maintain the disqualification for obvious motives based upon the precarious and anomalous position of the English in India, and I am not aware that anything has occurred lately to justify its abolition. It is true that education has made considerable progress, and that the Native officers who would be invested with magisterial powers over Europeans would be men of considerable education; yet education is not everything, and, in fact, is but a small factor in a very great social and political problem. The peculiar temper and habits of the two races are of much more moment, and deserve far more consideration than the mere fact how much education an officer possesses. The common sense to judge accurately of the facts involved in a criminal case, and the firmness to act righteously and to do justice, are, perhaps, all that is necessary in a Magistrate, without any great degree of culture; but, if the proposal is that certain Natives only should be invested with powers, we would witness the anomaly of the Native officers, who had grown grey in dispensing justice blamelessly, declared unfit to exercise powers over white men, which the young and untried Native Covenanted Civilian would possess. If Natives are to possess such powers, it would be perfectly inconsistent to give them to raw youths and discard the experienced elders and greybeards, who have worked so long and honourably in their careers. Why should the young and inexperienced Native Civil Servant have powers which will be denied to the ablest of the Deputy Collectors? Who are the Deputy Collectors except men, who, as a rule, have been promoted for tried merit, and men possessing University degrees, who do precisely the same work as Covenanted Assistants, and are treated like dogs in comparison; and are they in any degree worse than the Covenanted Native Civilian? Again, who are the *mámlatdárs* but intelligent and experienced men, who have for years possessed magisterial powers which they exercise carefully and intelligently, and who are every day passing the higher examinations prescribed for the Covenanted Civilian? If it were merely a question of giving powers to the most efficient Native officers, nothing would be simpler than to bestow them upon men who have proved themselves to be the most worthy in the actual business of life, and not upon mere scholars or upon the scions of the Native Civil Service with their supposed pretensions to nobility. It is obvious, as I have said, that education is a very small factor in this question, and that the proposed reform, instead of settling the question at once and completely, would be merely the beginning of far greater changes. The proposal in the present form is merely to give certain powers to certain Natives, not because they are more fitted for their exercise than other Natives of greater experience and practised intelligence, but because they hold a certain position, and it is thought expedient to break down the distinction in this respect between the Covenanted English and the Covenanted Native officer.

In this view, the feeling of the European community has apparently not been considered, or has counted for nothing, but the frantic yell of disappro-

bation with which the proposal has been greeted has shown that the feeling of this community counts for something, and that it is deserving of some consideration. It is not a question whether these feelings are right or wrong, worthy or unworthy; the fact is, that the feeling of social difference between the two races is so distinct and marked and pronounced, that it is advisable to consider, before exciting them or wounding acute sensibilities, whether any worthy end is to be attained which will justify the Government in braving a popular outburst in order to attain it. There are many actions, very harmless in themselves, which are yet resented bitterly by persons who happen to attach undue importance to them. An Englishman walking into a Hindu temple to admire its architecture might unconsciously be risking his life when a fervid Hindu might consider his intrusion as an abominable desecration. Going into a mosque or tomb with boots on might excite a fanatic Musalman to violence, and the great shoe question has gathered round it an angry and stormy literature full of ominous mutterings and lurid wrath. There are some persons who can regard all these displays of temper with philosophic indifference, but the Europeans in India are not a collection of philosophers. Like the Vere de Veres, they have the passions of their kind, and, perhaps, it would be just as well to refrain from rousing these passions unnecessarily.

I presume the proposed reform can be defended on the ground that the trial of Englishmen by Englishmen produces great administrative inconvenience, and that it inflicts a great wrong upon the Indian people, which should be redressed. If it were true that this privilege caused a wrong to the Indian people, there might be some reason for abolishing it, but, as a fact, it is a mere matter of procedure and not of substantive law. When the Penal Code was passed against the protests of the European community, the Government very properly were firm in declaring that there should not be one law for the Native and one for the European, that there could not be two definitions of the same offence, and that both persons should be liable to the same punishment. But, as a matter of procedure, it left the execution of the law upon Englishmen to be carried out by Englishmen.

At first it was not very difficult to require that all cases against Europeans should be tried by the Supreme Courts at the Presidency-towns, under the safeguards afforded by the time-honoured system of trial by jury. But after a time the great number of Europeans who settled in the Mufassal made it necessary to amend the law, and English Magistrates and Judges in the interior were empowered to try Englishmen, and pass certain light sentences upon them. If these powers are not enough, they may be increased, but I can see no reason why Natives also should have these powers. The places where English settlements are to be found are not many, the offences which the English are known to commit are very few, and, with the exception, perhaps, of parts of the tea and coffee plantations, the settlements are all accessible by rail. With rare exceptions, there is not a place where an offender could not be placed before an English Magistrate in 24 hours. Kanára has been referred to to point the inconvenience, but that difficulty is now fast disappearing, for the railway will shortly be opened, and communication will be opened north and south. In fact, every new mile of railway and every new span of telegraph helps to weaken the objection on the ground of inconvenience. If it is possible with rapid communication for a smaller army to hold a larger territory, it is also possible for fewer Civilians to superintend larger areas than formerly; and within a few hours of the arrest of an offender the Magistrate and the criminal can now be brought together from widely different points.

Administrative inconvenience, therefore, there is really none, and whatever there is, is rapidly disappearing. There is no wrong to the Indian people in requiring that Englishmen shall be tried by Englishmen, and, on the whole, this plan secures a firmer administration of justice than perhaps would be possible in the hands of Natives. Is it necessary, then, merely for the sake of abolishing a distinction between Covenanted Native and Covenanted English officers, to make a reform which is not essential, in order to remedy a grievance which no one feels. The educated Native would easily understand that, if he is not entrusted with this power, it is not because he is not fitted to exercise it, but because it is not expedient that he should do so. The time may come when high Native officers will mix more freely among Europeans, and will be received upon a better social footing; and it is possible that a free intercourse

may soften and ultimately remove prejudices and antipathies about which there can be no mistake at present. When that time does come, then a reform, which is now objectionable, will pass unchallenged, and will not want supporters. Till then nothing will be lost by it being postponed.

But if it is considered necessary to make some immediate advance towards that end, then the suggestion which has been made in the papers might be considered, and the accused may have the option of objecting to be tried by a Native Magistrate. The objection should be allowed not at the beginning of the inquiry, but on framing the charge, for, if the inquiry disclose no *prima facie* case, the Magistrate would discharge the accused; but on framing the charge he should inform the accused that he is at liberty to object to the Magistrate going on with the case. If the objection is raised, the case should be transferred to an English Magistrate, who should take up the case at the point at which it has been stopped, or recall the witnesses at his pleasure, or the Native Magistrate may, notwithstanding the objection, go on to hear and record the evidence for the defence, and then forward the proceedings with his opinion to an English Magistrate, who, if he concurs with the Native Magistrate, shall acquit the accused or pass sentence upon him, as the case may be; if he does not concur, the papers should be forwarded to the District Magistrate or Sessions Judge, if either of them is an Englishman, for disposal and final orders. In cases committed to the sessions, when the Judge is a Native officer, he should be assisted by assessors who are Europeans, or by a jury of Europeans. These suggestions, while they would afford the Native officer an opportunity to conduct the proceedings, would yet require that the guilt of the accused should be established to the satisfaction of one or more Europeans.

(Signed) W. R. HAMILTON.

MEMORANDUM by DISTRICT MAGISTRATE, Ahmadnagar (No. 2779, dated 21st April 1883).

IN forwarding this opinion of the City Magistrate on the subject of Government Resolution, No. 2258, dated the 2nd instant, the Under Secretary to Government in the Judicial Department is aware that only his own opinion was asked for. Mr. Hamilton is, with Mr. Snow, the only officer of pure European descent at present subordinate to the undersigned; it is, therefore, thought that his opinion may go for what it is worth as a representative of the class about whom Government propose to legislate in the Bill to amend the Code of Criminal Procedure.

(Signed) J. ELPHINSTON.

LETTER from DISTRICT MAGISTRATE, Upper Sind Frontier, to UNDER SECRETARY to GOVERNMENT, Bombay (No. 1,497, dated 24th April 1883).

IN reference to Government Resolution, No. 2258, of 2nd instant, I have the honour to state that, since I replied to Government Resolution, No. 2985, of 13th May last, the question as to whether certain Judges and Magistrates should be given jurisdiction in the Mufassal over European British subjects has been most fully and publicly discussed, and, considering the arguments adduced and the strong opposition there is to the Bill, I am now of opinion that it is not advisable to invest Natives with such jurisdiction. As the arguments against the Bill have been published and are well known to Government, it appears unnecessary for me to repeat them here, and I imagine that, under the circumstances, a simple expression of opinion is all that is required of me.

(Signed) H. E. WATSON.

MEMORANDUM by DISTRICT MAGISTRATE, Broach (No. 1091, dated 16th May 1882).

IN obedience to Confidential, No. 2985, dated 13th instant, from the Chief Secretary to Government, Judicial Department, the District Magistrate, Broach, has the honour to express his opinion that fitness to be vested

with certain powers should not depend on membership of the Covenanted Service.

2. If all members had entered by the same straight and narrow gate of competition, something might be said against creating an invidious distinction by refusing Natives the same jurisdiction as Europeans.

3. But, when some are entering in through the broad and easy way of private patronage, without having shown by any test their fitness for membership, the inadvisability of vesting these with the jurisdiction denied to those who have lacked the influence necessary for their appointment is obvious.

4. Whatever may be said in favour of vesting with the jurisdiction those who have entered by competition, there is very much more to be said against it, and personally the undersigned is opposed to any Native being so vested.

5. But he can conceive of no reason for so vesting, merely because they belong to the Service, all the Natives who are brought into it by luck or favour through nomination.

(Signed) G. W. BORRADAILE.

LETTER from DEPUTY COMMISSIONER, Thar and Parkar, to ACTING CHIEF SECRETARY to GOVERNMENT, Bombay (No. 140, dated 26th May 1882).

REPLYING to your Confidential letter in the Judicial Department, No. 2985, of 13th May 1882, I have the honour to submit an opinion that, as regards the provisions of Chapter XXXIII. of the new Code of Criminal Procedure, it is inexpedient that all members of the Covenanted Service, whether European or Native, should be placed on the same footing until all the latter, besides acquiring an European education, shall in their private lives have put on the manners and customs of Western nations.

(Signed) R. S. CRAWFORD,
Major.

LETTER from DISTRICT MAGISTRATE, Thar and Parkar, to UNDER SECRETARY to GOVERNMENT, Bombay (No. 161, dated 26th April 1883).

WITH reference to the Resolution of Government in the Judicial Department, No. 2258, dated 2nd instant, calling for opinion on the subject of the proposed Jurisdiction Bill, the District Magistrate, Thar and Parkar, has the honour to report that, as he was opposed to the measure mooted in Government Circular, No. 2985, dated 13th May 1882 (*vide* District Magistrate's Confidential report, No. 140, dated 26th May 1882), so also his opinion is that the present Bill should not be passed.

(Signed) R. S. CRAWFORD,
Major.

LETTER from DISTRICT MAGISTRATE, Kaira, to SECRETARY to GOVERNMENT, Bombay (No. 411, dated 24th April 1883).

As directed in Government Resolution No. 2258, dated 2nd instant, I have the honour to express my opinion on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects. The subject has been so discussed in every part of India in all its bearings, that I am unable to put it in any new light or to add any fresh argument. I can only state my own views upon it. I would wish it, however, to be understood that I have no personal prejudice about the matter. If it happened that I had to be tried for any offence, I do not know any single Native Judge or Magistrate, first class, in this Presidency whom I should doubt doing justice to me simply because I happened to be a European. I base my views on the grounds of necessity, expediency and policy.

2. The Bill is admittedly one to cure an anomaly. The British rule in India is full of anomalies, without the existence of which that rule could not last for a single day. I fail to see that the anomaly in question is greater than very many others, it certainly does not curtail the liberties of the general

Native public in India, as many other anomalies necessarily do; and, by doing away with it, I do not see that any single Native British subject will be made a little the happier. I put out of the question the sentiments of agitators and would-be patriots of the advanced school, to whom anything that depreciates the European is a source of happiness; on the score of necessity I see no cause for amending the present law.

3. Had the Bill been brought under consideration at any other time, it would not have so much mattered, and it might even have passed into law without causing much commotion, or stirring up bitter and excited feelings. But to my mind the present time has been a most unfortunate one. During the past year, the whole attention of the Natives of India has been drawn to projected reforms in the shape of local self-government and other matters. Whatever the very small minority of educated and enlightened Natives may think of these reforms, they surpass the wildest imagination of the great masses of ordinary Natives, who have traditionally looked upon the "Sarcár" and its servants, the district officers, as the originators and wielders of all power and influence. They have scarcely begun to comprehend the bearing of these reforms, which tend to deprive European civil executive officers of the power and influence they have hitherto held, when this Bill makes its appearance, and looks to them as if Europeans were to be levelled down to the status of Natives. To their view, there has been a general cheapening of the Europeans, which I cannot look upon except as fraught with trouble, if not absolute danger, in the future. The English do not hold India by actual force so much as by prestige, if we now go deliberately destroying that prestige, we may to our cost find our hold on the Natives very insecure. For these reasons I look upon the Bill as not expedient and impolitic.

4. I beg to append the opinions of Mr. R. M. Kennedy, Divisional Magistrate, and Mr. Modi, first class Magistrate, to both of which I would invite attention.

(Signed) A. H. SPRY.

LETTER FROM ASSISTANT COLLECTOR, Kaira, to COLLECTOR, Kaira, (No 353, dated 12th April 1883).

I HAVE the honour to report with reference to your No. 343 of 9th April.

2. So many arguments on both sides of the question have been set forth in the papers, English and Indian, that it is, on the one side, extremely difficult to offer any report within reasonable compass, and, on the other, I am loth to take up your time by inadequately stating what has already been much better stated over and over again.

3. For my own part I regret that the Bill has been introduced:

(a.) The law at present in force as to European British subjects constitutes a privilege, and does not take away jurisdiction. The privilege is one which, whether useful or not, for its own sake is useful in this country to emphasize the caste of the possessors of it, and, as such, is rather regarded with pleased acquiescence than with disfavour by the greater part of the people with whom I have come in contact. To abolish caste would undoubtedly be satisfactory to all, and specially so to myself, but this would raise a howl throughout the length and the breadth of this district, and any beginning in that direction would be the reverse of pleasing to the Hindus, and, when done from the top, would be really disastrous; for, though I cannot admit that caste is self-respect, I am prepared to admit that want of caste occasions want of self-respect. And who are they who clamour for the change in the law? Hindus who have visited England, who by limited intercourse with lawyers of advanced views (I think I am right in saying this is the only society seen by Hindus in

* I must carefully except Pársís who visit England with their parents and families, and who, as residents, have opportunity of seeing first class society.

England) have learnt to see grievances others would not see, and who cannot be regarded as in any sense leading opinion in India, where they are out-casted for their pains on return.*

(b.) Secondly, the Bill will undoubtedly shake the confidence of all British men in the law, a great disaster in itself, and just now likely to be more disastrous, when a scheme for local self-government is on its trial, which may,

and probably will, lead to further self-government, and when it is particularly desirable that all classes should pull together.

4. However, the Bill has been introduced; and such being the case, it only remains to make the best of it. To withdraw it altogether would, under present circumstances, be objectionable, as it could hardly be withdrawn without attracting observation; those indifferent to the Bill as to its merits would, I should fear, object very much to see it withdrawn. The Bill as it stands will, I hope, work satisfactorily for the ends of justice, and I may note that no real hardship could well be inflicted (*a*) if sections 408 and 416 are retained as they are in the present Bill, and (*b*) as Magistrates able to try European British subjects are to be Justices of the Peace, and therefore Taluká Magistrates, who would be prone to undue leniency as a rule, and would be subject to prejudice on special occasions, would be excluded. In Natives of Her Majesty's Covenanted and Uncovenanted Civil Service who are experienced Magistrates, I venture to think, complete reliance may be placed.

(Signed) R. M. KENNEDY.

LETTER from MAGISTRATE, FIRST CLASS, Ahmadábád, to DISTRICT MAGISTRATE, Kaira (No. 121, dated 14th April 1883).

WITH reference to your No. 343 of the 9th April 1883, desiring opinion on Mr. Ilbert's Bill for extending the criminal jurisdiction of Native civilian Sessions Judges and District Magistrates and Assistant Collectors of approved qualifications over European British subjects, I have the honour to submit as follows.

Theoretically, the rights of men should be considered as equal everywhere; the white men have no rights superior to those of the negro slave, the Briton has no rights superior to those of the Hindu, and the twice-born Bráhmaṇ must not be considered superior to the Bhangí and the Dher. But if we proceed upon the equality of the rights of man, then, in order to be consistent, we should not have the British ruling over us; we should be governing ourselves, and should have a republic; though it may be a question after what model that republic should be formed; for all the philosophers of the eighteenth century could not succeed in guiding the French people to choose a republic that was not worse than a despotic monarchy. We see that the principles of equality, liberty and fraternity cannot be followed in connexion with the Government of India; we must make *expediency* our guide, though, perhaps, there may be some who would argue that whatever is not just cannot be expedient. I do not want to enter into any exposition of what is meant by right and just, but I need not say that all common-sense people understand what is meant by expedient. It means that which tends to secure the greatest amount of happiness and content under given circumstances.

The grounds on which I would dislike the proposed legislation are—

First, that there is no necessity for it, and second, that the mischief that would be caused by it, by creating race feeling, would be quite out of proportion to the benefit that might be gained by courting popularity, so to speak, and by abolishing the "anomaly."

With regard to the necessity for the measure, it has been admitted, even by His Excellency the Viceroy, that there is not any great administrative inconvenience felt at present, but that he wants to provide for the future, when there will be many Native District Magistrates and Sessions Judges. Now, without going so far as to say that it was not a good policy to have yielded to the cry for the indiscriminate admission of Natives into the Civil Service, I would submit humbly that, even were all the District Magistrates and Sessions Judges Natives, still it would not cause much inconvenience if they had not the power to try European British subjects. In this Presidency, the number of Europeans is comparatively very small, but in the Bengal Presidency there is a large population of European planters and indigo-factors; and it has been said that these gentlemen often lose their temper and not unfrequently cause the death of mild Hindus, and that, owing to the necessity of going before the Calcutta High Court, justice is often defeated. I do not believe that such is the case. I cannot conceive how, owing to the necessity

of going long distances, the witnesses would give false evidence. If anybody suffers more than another when a Mufassal case is tried before a High Court, it is the accused, who is upon his trial, and who has to give large fees to his counsel.

With regard to the mischief caused by stirring up race-feeling, one has only to read the accounts of the meetings of Europeans held at different places, and also of the meetings of Natives in some places. And why all this great trouble? for what good? Simply for the sake of sweeping away an anomaly! But it should be noticed that this sweeping away of the anomaly will not tend to make the Native an equal of the Englishman. It will not increase his loyalty towards the throne of our august and beloved Queen Empress; it will only tend to give a few Natives who will be fortunate enough to be District Magistrates and Judges the satisfaction of knowing that they can sit in judgment upon one of the conquering race.

And in this place I would humbly state that I do not agree with those who argue that the Natives will not administer justice evenly and honestly towards Europeans. The fears expressed in several quarters, that the Europeans would fare badly at the hands of Native Judges, should be dismissed from our mind at once. English education as given in Indian schools and colleges, and the contact with European professors and teachers, are sufficient to ingrain into the nature of the Natives the principles of honesty and straightforwardness. Why the Europeans should oppose this Bill is not that the Natives will not be just in their administration of the law, but because it would lower the prestige of the ruling race, and it would wound his pride. And let us see what is the position of the Native towards the European. The latter, coming to India for securing its commerce, found himself vastly superior to the Native in every respect—in the ability to carry on large commercial transactions, in the art of navigation, and in military tactics and personal bravery and bodily strength, and in the art of conquering other nations and governing them justly. The Briton, finding himself superior to the Hindu, conquered him, but he is just as well, as powerful and strong; and he has therefore governed the other in such a way as to increase his happiness a hundred-fold. Of course, the Natives now forget from what condition they have been raised up by the Briton, and what blessings they now enjoy; but such is always the case. They would be happy if only they knew what good things they have. But is it becoming in a Native now, when he has been taught by his benefactors how to cultivate his intellect, to turn round and say that he is not at all inferior to the other. It should, however, be remembered that the cry of equality is raised only by those who want to become the equal of their superiors; these same liberal-minded persons would be greatly shocked if it was suggested to them that the persons inferior to them in social position wanted to become their equals. Let us consider what the Bráhmans would say to Dher and Bhangi Magistrates. Let us also consider how the Natives wanted the Shástris and Kázis to expound their laws; let us consider how the Pársis prize the privilege of having Pársi delegates in the adjudication of their matrimonial cases; and let us also consider how the Surat Nawábs had by law the power of deciding all cases affecting the members of their household. We see everywhere that there is a pride of race.

“Order is Heaven’s first law, and, that confessed,
Some are, and must be, greater than the rest.”

Against me personally it may be said that, when I thus write in opposition to the Bill, I, being a Pársi and an alien, have no patriotism, and that I am influenced by the fact that the Pársis have benefited greatly owing to the British. I may say that we have been in India for more than a thousand years; we have been here before the time of Hengist and Horsa. I may also say that, if we have benefited owing to the advent of the British, so much the more reason that we should be content with our present subject condition. I may, however, be pardoned for indulging in a little personal pride that our own family has, instead of rising, only fallen in influence owing to the introduction of the several laws and regulations; but we have always been devoted to the British cause from the time that the first factory was established at Surat, and more than a hundred and twenty-five years ago two of our ancestors were killed by the seceders from the Surat Castle for rendering assistance to the British who were besieged in the factory. We were devoted

to the British because we considered them a superior race; and I have no hesitation in saying that the Natives will be happy only as long as they feel that their rulers are a superior race. To the Bráhmans the other people are bound to bow; but the Bráhmans themselves never bow, they never raise their hands for *salam*, but they only extend them and give their blessings: the sayyads extend their hands to be kissed by the other Muhammadans, but they never kiss the hands of the others. Now, when there are such race-distinctions among the Natives themselves, why should they not make any difference between themselves and the ruling race. But a few Bengali Bábús might say that they have discarded all the Native notions of inequality among men; a few Bengali Bábús, however, are not the whole of India.

If the European population in India do not object to the Bill, then by all means let it be passed, but I would submit that it should not be passed against their wishes. We should not displease them. It has been pointed out by a very able defender of the Bill, Sir Arthur Hobhouse; that, when the Native Judges were invested with the power to hear and decide civil cases in which Europeans were concerned, there was the same amount of agitation and opposition from the Europeans of India, and that all sorts of evils were prophesied. I admit that all the evils now predicted by the Europeans will never come to pass; but I should earnestly desire that some deference should be paid to their race-prejudices.

(Signed) B. E. MODI.

LETTER FROM DISTRICT MAGISTRATE, Kolaba, to COMMISSIONER, Northern Division (No. 1620, dated 2nd May 1883).

WITH reference to Government Resolution No. 2258 of the 2nd April 1883, circulating a draft Bill for the amendment of the Criminal Procedure Code, I have the honour to forward the reports of Mr. W. F. Sinclair and Mr. A. W. Hughes, Magistrates, first class.

2. I have little to add with them. I agree with Mr. Sinclair, except as regards the advisability of giving powers to Native Civil Servants who have attained their position by passing the competition in England.

3. I think no change is necessary. No administrative inconvenience has been felt by the present inability of Native Magistrates in the Mufassal to try Europeans, and I do not think any is likely to occur in any future sufficiently near to make it necessary to legislate for it.

4. In the solitary district where the Magistrate of the district is likely to be a Native or the few districts where some of the Sub-divisional Magistrates are Natives, there are sure to be other European Magistrates qualified to try the very few cases that occur where the defendants are British subjects of Her Majesty.

5. The reasons which have always existed for granting the European British subjects certain privileges still exist, and the arrangement, that in a British dependency administered by British officers they should not be subject to the jurisdiction of any Magistrates but those of their own race, is such a natural one, that I think those who advocate the change should have much stronger arguments to support it than such academic or sentimental ones as are derived from the "anomaly" of the present state of the law (unless all distinctions between Natives and Europeans in Criminal Courts is to be done away with, which is not suggested—this would still exist), or the supposed injury to the feelings of a few highly placed officials, because they are not to try, say, once every five years, an Englishman who prefers to be tried by his own countryman, the latter being *cæteris paribus* better qualified to conduct the inquiry.

6. The feelings of those directly affected by the proposed change are certainly a more weighty subject for consideration, and, after it has been almost unanimously condemned by the whole non-official British community in India, there can be no doubt as to what they are.

7. Every Englishman in this country is regarded by the people as a representative of his Government. The spectacle of one of the "sahab log" handcuffed and sent to jail by order of a Native Magistrate is scarcely calculated to increase the prestige of the British Government, or strengthen a rule of

which the consideration in which the ruling race is held by the populace is not the least support.

8. I submit these remarks, fragmentary and inadequate to the subject as they are. The matter has been so fully discussed in the Press and elsewhere, and my view of the matter so forcibly stated by Sir J. Stephen and other distinguished men, that I feel it would only be a waste of the time of Government for me to submit a report discussing the propriety of the proposed legislation at the length the subject deserves.

(Signed) A. KEYSER.

MEMORANDUM by MAGISTRATE, FIRST CLASS, Alibág (No. 27, dated 13th April 1883).

THE undersigned, with compliments to the Collector of Kolába, has the honour, in reference to his memorandum No. 1341 of 8th instant, to remark, in the matter of the proposal to amend the Code of Criminal Procedure of 1882 so far as relates to the exercise of jurisdiction over European British subjects, that, as regards clause (a) of section 1, no amendment appears to be necessary. Europeans of all grades resident in India would no doubt very much prefer exercise of jurisdiction over them to be with their own countrymen, instead of with Natives of the Covenanted Civil Service, however highly educated and in other respects fitted for the proper discharge of their duties. If the power it is proposed to give to Native civilians were granted, there would, perhaps, for the first few years afterwards, be a tendency to undue leniency in their dealings with accused persons of European descent, but after that the probability is it would be the reverse, more especially if at any future time circumstances were to occur which would have the effect of stirring up race-antagonism and strife, such as recent events have shown lie unfortunately only in a dormant state.

It is the candid opinion of the undersigned that, taking into consideration the relationship as existing between Great Britain and its extensive dependency, India, it is not expedient to legislate as is proposed by Mr. Ilbert's Bill; and, if this applies in the case of the highly educated Indian Covenanted civilian, much more must it do so to the members of the newly constituted Native Civil Service, and others coming under clauses (b) and (c) respectively of section 3 of the Bill, who do not even possess that veneer of European civilisation which the Indian Covenanted Civil Servant, from his three or four years' residence in England, is supposed to have acquired.

As regards the appointment of Native civilians to Cantonment Magistracies with reference to clause (d) of the same section, the undersigned believes that such would be eminently distasteful even to the Native officers and men of the Native regiments, and, as a natural consequence, infinitely more so to the officers and men of British regiments. From the above remarks it will be considered unnecessary for the undersigned to offer any opinion upon the repeal, amendment, or substitution proposed in sections 2 to 5 of the Bill.

(Signed) A. W. HUGHES.

ENDORSEMENT by DISTRICT MAGISTRATE, Kolába (No. 190, dated 12th April 1883).

FORWARDED with compliments.

Taking the sections as they come. 1. (a).—This refers to Native gentlemen who have gone to England and beaten Englishmen on their own ground. They have, moreover, been obliged to study English law in English Courts; and if they are fit for the service at all they are fit for all its duties. Undersigned cannot see why they should be on a separate footing from European Covenanted civilians.

(b), (c).—These two classes of officers are as alien from an European in habit of thought as inhabitants of another planet. They cannot understand an European accused, nor be them; and the Court and accused would be, if the latter were undefended by counsel, at cross-purposes the whole time. As a body, these officers in this Presidency do not seem to *want* the powers; and

no inconvenience is caused by their not having them. Undersigned feels bound to say that they would be far more likely to err on the side of undue leniency than the other way.

(d) *Cantonment Magistrates*.—Undersigned is very strongly of opinion that the appointment of a civilian Cantonment Magistrate of any sort is a mistake and leads to friction.

The appointment of a *Native* Cantonment Magistrate would probably lead to a very undesirable state of mind not amongst European troops only but also in the Native regiments.

It is difficult to suppose that such an appointment can have been seriously contemplated; but perhaps the draughtsman had in his mind's eye the collapse of a case in Madras some ten years ago, on the discovery of a clever vakil that the Magistrate was technically a Frenchman.

To section 2 the undersigned can see no objection.

Section 3.—To agree with what has been said above, instead of striking out the words "and an European British subject," there should be added to them "or a covenanted Civil Servant appointed in England."

Section 4 et seq.—Unimportant.

(Signed) M. PHELAN.

LETTER from ACTING DISTRICT MAGISTRATE, Tháná, to CHIEF SECRETARY to GOVERNMENT, BOMBAY (No. 2078, dated 10th April 1883).

As directed in Government Resolution, No. 2258, dated 2nd instant, I have the honour to submit herewith my opinion on the Bill to amend the Criminal Procedure Code sent to me with the Government Resolution quoted above.

2. I venture to say, with all respect, that it is somewhat late in the day to call for the opinions of officials on a Bill which has provoked such a storm of opposition from the European community, and I somewhat shrink from going over the arguments against it. I consider, however, that the main objections to it are that it is entirely unnecessary, that it has been shown to demonstration throughout the country that the Europeans affected by its provisions look upon it as one of the gravest possible injuries which can be done to their rights and privileges in this country; that if Government look upon this one privilege of Europeans as an anomaly, which, *for that and no other reason*, it is desirable to remove, I can conceive no grounds on which the anomaly, say, of pardánishin women accused of serious offences being allowed to remain unseen by the Court trying them should not also be removed. That is an anomaly based purely on race-distinctions, and the particular case I have in mind is one which I myself tried some years ago. The accused was a Native lady accused of very serious offences under the Penal Code, and special arrangements had to be made in my Court to prevent any person, from the trying Magistrate to the witnesses in the case, seeing the accused person!! For all that I could prove to the contrary, I never had the real accused in my Court at all; and such anomalies, which are liable to occur all over the country, are placidly regarded by the legislature. The continent of India is crammed full of anomalies, and the effect of removing the particular one aimed at by the Bill is to rouse race-feelings and jealousies of the very worst character.

3. In the face of the almost unanimous opposition by the European public to the Bill and considering that this very question must have been discussed when Act X. of 1882 was being revised, it seems to me most advisable that this tinkering of a Code which has been barely three months in existence should be dropped. Had there been any real need for such an amendment, it is not unreasonable to suppose that it would have been brought forward prominently when the Criminal Procedure Code of 1882 was being discussed; and I cannot imagine that anything has occurred within the short term which has elapsed since its publication to make it necessary for Natives to try Europeans.

(Signed) F. D. MACKENZIE.

LETTER from DISTRICT MAGISTRATE, Haidarábád, to ACTING CHIEF SECRETARY to GOVERNMENT, BOMBAY. (No. 2916, dated May 20, 1882).

REPLYING to your No. 2985 Confidential of 1882, dated the 13th instant, I have the honour to state that, in my opinion, all members of the Covenanted Service, whether European or Native, ought to be placed on the same footing, and that no sufficient reason can be found for maintaining the distinction which now exists between the two classes in regard to their powers of trying Europeans.

(Signed) L. D'A. DUNSTERVILLE, Colonel.

LETTER from DISTRICT MAGISTRATE, Haidarábád, to UNDER SECRETARY to GOVERNMENT, Bombay. (No. 1852, dated May 3, 1883).

REPLYING to Government Resolution, No. 2258, of 2nd ultimo, I have the honour to state that, after the fullest consideration of the subject of Mr. Ilbert's proposed amendment of the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects, I find myself unable to recommend any fuller concession to the Native magistracy than that advocated in my letter, No. 2916 of 20th May 1882, replying to Confidential Circular, No. 2985 of 13th idem.

2. I advocated that concession under the impression that all Native members of the Covenanted Civil Service must needs be men thoroughly imbued with European ideas, as men should undoubtedly be who are entrusted with the exercise of jurisdiction over European British subjects; but I am assured by those who are in a position to know that this is not always the case; that the stay in England of these Native gentlemen is so short, and the trammels of caste and of natural ties are so strong, that no real change of ideas is effected; and that, in the majority of cases, the old legend holds true "*Cœlum, non animum, mutant, qui trans mare currunt.*"

3. Therefore, if the question put in the Government Resolution No. 2985 of 13th May, 1882 were now before me for reply, I should be disposed to advise that no change be made in the existing law in relation to this matter.

4. I freely admit that there must be some Native gentlemen in the magistracy, whether Covenanted or Uncovenanted Civil Servants, who might safely be trusted with the exercise of jurisdiction over European British subjects, but the selection of these would be difficult, and their numbers would be so few that it would hardly be worth while to legislate on their behalf.

5. In Sind we have no Native members of the Covenanted Civil Service, and in the number of Native Uncovenanted Magistrates whose work has come under my observation during the 32 years that I have served on the Sind Commission, I could not name more than three or four to whom I would have willingly seen such powers entrusted.

6. It is not a question of ability but of impartiality. I have met with many very competent Native Magistrates, and with some very incompetent European Magistrates. There are a thousand and one things among the surroundings of the Native Magistrate which must, in many cases, make it very difficult for him to exhibit strict impartiality, whilst the European Magistrate in India, isolated as he is, has, in the first place, no temptation to be otherwise than impartial, and is, in the second place, fully aware that any exhibition of partiality, even in favour of a European, would infallibly lower him in the estimation of his fellows.

7. In my humble opinion, the time for abolishing all race-distinctions, in the manner proposed by Mr. Ilbert's Bill, will not have arrived until it can be said of the Native magistracy, as a whole, that their decisions are no more swayed by "fear, favour, or affection" than are those of the European magistracy.

(Signed) L. D'A. DUNSTERVILLE, Colonel.

LETTER from ACTING JUDGE, Satára, to SECRETARY to GOVERNMENT, Bombay.
(No. 617, dated May 8, 1883).

In reply to Government Resolution No. 2258, dated the 2nd April 1883, Judicial Department, calling for my opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to make the following observations.

2. With regard to section 1 of the Bill, I can see no reason why any restrictions should be placed on the powers of the Local Governments, as they at present exist, to appoint any European British subject who is thought fit to be a Justice of the Peace. The narrowing of the class from which they may be appointed in the direction contemplated by the Bill is likely to prove inconvenient.

3. It is stated in the Objects and Reasons for the Bill that it is thought anomalous that, while Natives of India are held competent to discharge the highest judicial duties, they should be deemed incompetent to be Justices of the Peace and to exercise jurisdiction over European British subjects outside the Presidency-towns. Leaving aside the question whether this state of things is anomalous or not, it appears to me that it is not the proper function of the legislature to make laws which shall be ideally symmetrical, but to frame such enactments as shall remedy the grievances and pressing needs of the people. No administrative difficulty has been felt in this Presidency, as far as I am aware, owing to the existing state of the law. The proposed change would confer jurisdiction on, at most, five or six officers; but, even if looking forward to the future, when the Civil Service will have received large reinforcements of Natives, the investment with the proposed jurisdiction were of more universal application, it must be borne in mind that the criminal class of Europeans in India is not large. The cases that arise in which Europeans are concerned are few and far between and it is, and will always be, possible in view of the increased facilities of communication which are daily taking place, to make arrangements for the trial of European offenders without having recourse to a legislative enactment, which is liable to misconstruction and calculated to arouse the worst feelings towards our Native fellow-subjects.

4. No inconvenience to the general public is likely to arise from the present state of the law, as, by the provisions of section 445 of the Criminal Procedure Code, it is competent to any Magistrate to take cognizance of an offence committed by a European British subject, and, if necessary, issue process for compelling his attendance before a Magistrate having jurisdiction to inquire into and try the case.

5. There is another aspect which presents itself to my mind, which is that, if the idea of removing so-called anomalies from the Statute Book be once dominant, there is no knowing where it will end. It may occur to future legislators to take away the right, which Europeans now enjoy, of being tried by a jury of which not less than half the number shall be Europeans or Americans; and gradually the privilege of being tried by his peers, which from the days of the Magna Charta an Englishman has so highly prized, will be altogether taken away to obviate a necessity which in practical politics has never been felt.

6. The Statement of Objects and Reasons goes on further to say that the Government of India has decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race-distinctions. It appears to me that, looking at the history of our connexion with India and the constitution of the present system of government of the British Empire in India, any legislation which has for its object the removal of disqualifications based merely on race-distinctions is altogether anomalous. The most cogent illustration of my meaning which occurs to me is suggested by a reference to the constitution of the Native army in India. However efficient as a soldier a Native may be, however qualified in all respects for regimental advancement, it is impossible in the present state of the law that he could be promoted to the command of a regiment.

7. There is yet another objection to the Bill which, from a political point of view, should not be lost sight of, which is, that it is not advisable to create a class of judicial officers which are declared not to possess the confidence of the people over whom they are to exercise jurisdiction.

8. Looking at the amount of race antagonism which the discussion of this measure has provoked, looking also at the absence of all grounds for its introduction beyond what I may term sentimental ones, I am of opinion that any change in the law in the direction indicated is uncalled-for and unnecessary.

(Signed) W. H. CROWE.

LETTER from DISTRICT MAGISTRATE, Belgaum, to ACTING CHIEF SECRETARY to GOVERNMENT, Bombay. (No. 2041, dated May 16, 1882).

I HAVE the honour to acknowledge receipt of your letter No. 2985, Confidential of the 13th instant, respecting the trial of European British subjects by Native Covenanted Magistrates and Judges.

2. As a general question, I do not see any reason why Native Covenanted Magistrates and Judges should not exercise the same jurisdiction over European British subjects as can be exercised by European Covenanted Magistrates and Judges.

3. Chapter XXXIII of the new Code of Criminal Procedure relates, however, also to jurisdiction in criminal matters over Americans and Europeans other than British subjects.

4. It is to be noted that this chapter is titled "Criminal Proceedings against Europeans and Americans," though sections 443 to 451 refer exclusively to "European British subjects." Section 452 would appear from the wording to apply to *all Europeans* were it not for the marginal reference, which seems to limit it to European British subjects and Natives jointly accused.

5. Americans and Europeans who are not British subjects do not appear to be made amenable by this chapter to any magisterial jurisdiction. From this it would appear that they are subject to the jurisdiction of both European and Native Magistrates, and are only to be specially treated when brought before the Sessions or the High Courts.

6. The above remarks may not seem to have any reference to your letter under reply; but my object in making them is to represent that, in my opinion, if any change in the law is made, European British subjects, other Europeans and Americans, should come under the same jurisdiction.

7. I would point out that, if Native Covenanted Magistrates are to be given jurisdiction over European British subjects, it will be necessary to amend section 22 of the new Code, as, under it, only European British subjects can be appointed Justices of the Peace outside the Presidency towns; and I am under the impression that, apart from any provisions of the Criminal Procedure Code, European British subjects can only be tried by Magistrates who are Justices of the Peace.

(Signed) A. C. JERVOISE.

LETTER from DISTRICT MAGISTRATE, Belgaum, to CHIEF SECRETARY to GOVERNMENT, Bombay. (No. 1669, dated April 23, 1883).

I HAVE the honour to reply to Government Resolution No. 2258 of the 2nd instant.

2. The provisions of the Bill received with the Government Resolution appear to sufficiently meet the object it has in view. I conclude, however, that Government do not wish the replies to their reference to be confined to an opinion as to whether the provisions made in the Bill are likely to be effective or not, but to extend to the question as to whether the passing of such a Bill into law is advisable or otherwise.

3. The nature of the Bill is such that it is not easy for a Government officer to express dissent from its provisions without at the same time discussing the policy out of which it has been born. But I feel that it would be highly unbecoming in me, as an executive officer, to give any sign of questioning that policy.

4. When, in reply to Government Circular No. 2985 of the 13th May 1882, I stated that I did not see why Native Magistrates should not have jurisdiction over European British subjects, I regret to say that I did not at the time see all that might be involved in that jurisdiction. As a Magistrate who had spent a considerable number of years in districts where almost the only European British subject besides the Government officers that ever appears is a person whose sole offence is that of being a vagrant, and whom I have never found to offend in any other way, I, most inexcusably I admit, went no deeper into the question than so far as it affected such a class, and I did not see why a Native Magistrate should not be able to dispose of such vagrants as fairly and as intelligently as a European Magistrate; moreover, it appeared to me that, as there would always exist the power of the District Magistrate to transfer, if considered advisable, a case against a European British subject from the Court of a Native to that of a European Magistrate, the exercise of their jurisdiction over Europeans by Native Magistrates would be subject to the immediate control and supervision of the District Magistrate; and, so far as this district—and I might almost venture to add, this Presidency—is concerned, I should still hold to my former opinion, if it were not that I find myself face to face with the possibility—a possibility that even now I can scarcely bring myself to grasp—that it may be at some future time the case that the Magistrate of this district will himself be a Native. When this comes to pass, the guarantee, that a European British subject would otherwise feel, he had of being tried, if not actually by one of his countrymen, at all events by a Magistrate whose proceedings are subject to the immediate control of a European Magistrate, will be gone.

5. It is not without reason that a European British subject might object to being tried before a Native Magistrate where he cannot obtain (if he could afford it) the assistance of well-trained counsel, either of his own race, or one who may have, by practice in cases where Europeans are concerned, acquired a knowledge of European habits, social and domestic unwritten laws, or other subjects which would enable him to clear points which might otherwise be incomprehensible to the Native Magistrate. But, even were his feelings against being tried by a Native Magistrate declared to be simple prejudice, it would have to be admitted it was a prejudice often shared by Natives themselves. I cannot believe that I am alone in my experience of numerous applications made by Natives, when they have been either honestly or dishonestly accused of offences, that their cases may be transferred for trial before a European Magistrate. Such applications are not, as far as I have seen, ever grounded on any supposed superior legal attainments of the European Magistrates, but on some idea that they will obtain a fairer hearing and a judgment which, whether favourable or not, they can rely on as conscientiously arrived at. I have little hesitation in asserting that, if those Natives who have raised their voices against the law, which is (I believe) in force in all colonies, that Europeans shall be tried by their own countrymen, were ever to have practical proof in their own persons that they had thereby debarred themselves from applying that their cases be tried before a European Magistrate, they would much regret the clamour they have made.

6. It may be argued that, if Natives are but little cognizant with those habits of Europeans—social, domestic, commercial, or other—a knowledge of which would throw light on a case, there is almost, if not quite, an equal ignorance on the part of Europeans with respect to Natives, and that therefore they are not competent to administer justice to Natives. The answer to this is that it is not ever found that a Native prefers having his case tried by a Native instead of by a European, and that, therefore, however reasonable the sequel may appear, it is fallacious.

7. That there are many good Native Magistrates honest, straightforward, and painstaking, I most cordially admit; but I believe these are the very men who not only do not desire to hold jurisdiction over Europeans, but would infinitely rather be without it. I am aware that, as Magistrates, they are not the class or grade to whom the Bill proposes to give such jurisdiction, but as a class of Native gentlemen they are in many cases the same.

8. I have read a great deal of what has been advanced against this Bill in un-official circles, and have in common with others regretted that indignation and alarm have led to much being said that was impolitic and unfair, and had

therefore a tendency to alienate the sympathies of those who would be desirous of giving the speakers a hearing. Still the Bill is one which, in my humble opinion, should not pass into law without the evident assent of at least a majority of the race or class which alone it affects. No one knows better than do Native Magistrates how plausible are the complaints, how admirably supported by apparently honest evidence, which one Native will bring against any other whom he wishes to place in confinement. I do not wish to go far into the subject, but will only remark that in troublous times, if they should ever arise, few non-official European British subjects would feel that the liberty of themselves and their families would be secure while the highest magisterial authority in the district might be a Native with jurisdiction over them. It is no insult to any Native to suggest that such sense of insecurity would be felt, it could not with reason be expected to be otherwise, and the Bill must be looked at with non-official eyes.

9. The Bill is one which does not affect the Native community in the smallest degree. They did not seek it; but those whose vanity was fed with the idea of increased authority over Europeans are now like children who have been offered unexpected sweetmeats and cry that they should be withheld. But the Bill does vitally affect the non-official European colonists up country and at a distance from reliable legal assistance; and, with all due deference to adverse opinions, I maintain that it is by their voices, and the voices of those whose mercantile and other interests are involved in their comfort and sense of security, that the Bill should be judged.

10. The sole argument which is advanced as the reason for proposing the Bill is that it will remove an anomaly. Because a Native who has succeeded by passing certain examinations in entering the Covenanted Civil Service is held "competent to discharge the highest judicial duties" with respect to his own countrymen, therefore he must be competent to discharge such duties with respect to a race of which he has, at best, but a superficial knowledge. The really important question as to whether the policy of removing the supposed anomaly is safe or sound is not even glanced at.

11. I have said enough to show that I most respectfully, but most emphatically, disapprove of the object of the Bill. But perhaps the best argument against it passing into law is the entire absence of any necessity for it.

(Signed) A. C. JERVOISE.

LETTER FROM CHIEF PRESIDENCY MAGISTRATE, Bombay, to the CHIEF SECRETARY to GOVERNMENT, Bombay, (No. 329, dated May 23, 1883).

I HAVE the honour to acknowledge the receipt of the Resolution of Government, No. 2258 of the 2nd ultimo, forwarding for my opinion a copy of the Bill to amend the Code of Criminal Procedure, 1882.

2. It appears to me to be but right and fair, and in accordance with the principles of British justice, that an accused person should be tried in open Court, in order that his own community may be cognizant of what is going on, so that, if any error or failure of justice should take place in the trial, the voice of public opinion could readily reach those able to redress the wrong.

3. In Presidency-towns, a European is liable to be tried by a Native Magistrate, but such trial always takes place in the midst of a large European community, in the presence of members of the legal profession and of representatives of the Press; and, if any error or failure of justice did take place, it could very speedily be brought to the notice of the authorities, and redress easily obtained.

4. This state of things does not exist in the Mufassal; for, except in a very few stations, the European community is very limited, legal assistance cannot be easily obtained, there are no representatives of an English Press, and a European accused would therefore be placed at an extreme disadvantage in the event of his being tried before a Native tribunal.

5. Under these circumstances I am of opinion that the time has not yet arrived when Native Magistrates in the Mufassal can be invested with the power contemplated in the Bill:

(Signed) C. P. COOPER.

LETTER from DISTRICT JUDGE, Haidarábád, to SECRETARY to GOVERNMENT,
Bombay. (No. 464, dated April 13, 1883).

IN reference to Government Resolution No. 2258 of the 2nd instant, I have the honour to make the following observations.

2. In the first paragraph of the Statement of Objects and Reasons accompanying the proposed Bill, it is stated that it was thought anomalous that Natives should be deemed incompetent to exercise jurisdiction over Europeans outside the Presidency-towns. I would observe with all deference that it seems to me that it is hardly worth while legislating merely to remove an anomaly. As long as an arrangement of any sort works well, I am humbly of opinion it is perfectly immaterial whether it is anomalous or not.

3. I do not see that much practical inconvenience has as yet been caused by the law as it stands, and with careful supervision by the executive I do not anticipate any future inconvenience.

4. As a practical instance of what I mean, I may mention the possible case of a Native gentleman in Sind being appointed to the Native Civil Service. It would be very easy for Government so to employ this gentleman as not to put him in a position when he would be likely to have to try Europeans.

5. I have had considerable experience as a Magistrate and Sessions Judge in this Province, and have known several Native gentlemen who have been, and now are, employed as first class and sub-divisional Magistrates. I have heard of no inconvenience caused by these gentlemen not having power to try Europeans.

6. It seems to me that, as long as any part of Chapter XXXIII of the Criminal Procedure Code remains unrepealed, every judicial disqualification based merely on race-distinctions will not be at once and completely removed from the Code.

7. Personally, had I occasion to be tried by a Magistrate, I should care little, if at all, whether he were a European or an Asiatic, but the great majority of Europeans in India would, as they have shown, care very much; and I venture to question the expediency of removing an anomaly at the cost of exciting strong discontent among the non-official European community.

8. In conclusion, I would deferentially observe that, if anomalies are to be removed because they are anomalous, it becomes somewhat hard to justify the retention by Great Britain of her present position in India.

(Signed) W. S. FORMAN.

LETTER from DISTRICT MAGISTRATE, Púna, to SECRETARY to GOVERNMENT,
Bombay. (No. 3400, dated May 18, 1883).

IN compliance with the request contained in paragraph 1 of Government Resolution in the Judicial Department, No. 2258, dated the 2nd ultimo, I have the honour to express my opinion on the subject of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. So much has been written and said about this Bill that, in expressing my dissent from its principles, I can add nothing new.

3. It is argued in favour of the Bill that an invidious distinction is at present drawn between European and Native members of the Civil Service, inasmuch as the latter are apparently deemed incompetent to be Justices of the Peace and to exercise jurisdiction over European British subjects, and that this anomaly should be removed.

4. In my opinion, it is not a question of competency or incompetency on the part of Native members of the Civil Service. As far as those belonging to the Covenanted Civil Service are concerned, I admit that, by education, they are competent. It is not in respect to the trying authority, but in respect to the persons liable to be tried, that I object to the provisions of the Bill.

5. The question, as I view it, is, are Her Majesty's Native subjects to be allowed certain privileges and concessions, while none are to be allowed to Her European subjects in India?

6. If all anomalies were abolished in this country, if all race-distinctions and caste-prejudices were removed, the case would be different; but when respect

is paid by our Law Courts to the customs and caste-prejudices of Natives of India, Europeans in India may fairly claim equal consideration.

7. It is the desire of Her Majesty's Government that all accused persons, whether Natives or Europeans, should be placed on an equal footing when arraigned before a Court of Justice; but, if this Bill becomes law, this desire will not be fulfilled.

8. In a Presidency-town it does not signify if a European be tried by a Native Justice of the Peace; he has numbers of his fellow-countrymen about him; he can, if he pleases, engage European counsel or a counsel who thoroughly understands English, and he feels that he will have a fair trial. But in some out-of-the-way corner of the Mufassal, without any knowledge, or perhaps a very imperfect knowledge, of the language of the district, without a fellow-countryman anywhere near, I hold that an accused European is placed at a very great disadvantage compared with a Native of India under similar circumstances.

9. If the passing of this Bill into law was called for in the interests of the country and of the people at large, it would course be right to disregard the feelings of a particular section of the community; but there is no such justification for the measure, and as the Bill has caused, and will not cease to cause, the greatest dissatisfaction to the most loyal subjects of Her Majesty in this country, I think that it should be withdrawn.

10. If a compromise is considered desirable, then let Native members of the Covenanted Civil Service be made Justices of the Peace, and let Her Majesty's European British subjects, have, as now, the option of being tried by European Judges and Magistrates.

(Signed) J. G. MOORE.

LETTER FROM ACTING DISTRICT JUDGE, THÁNÁ, TO CHIEF SECRETARY TO
GOVERNMENT, Bombay. (No. 882, dated May 2, 1883).

I HAVE the honour to reply to Government Resolution No. 2258 of 2nd April 1883, on the subject of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. The Statement of Objects and Reasons says:—"It was thought anomalous that, while Natives of India were admitted to the Covenanted Civil Service and held competent to discharge the highest judicial duties, they should be deemed incompetent to be Justices of the Peace and to exercise jurisdiction over European British subjects outside the Presidency-towns."

I completely concur in that opinion. So long as the two conditions above-mentioned are fulfilled, I cannot see how a Native judicial officer should be deemed incompetent to try European British subjects.

3. But those conditions are of the highest importance.

(a.) The Native of India must be a member of the Covenanted Civil Service.

(b.) He must have risen to the highest judicial posts, that is, District Magistrate or Sessions Judge.

The first condition ensures his *general* fitness, the second his *judicial* fitness. Both are the complement one of the other.

A Native Civilian may have shown signs of the highest judicial acumen, and yet be unfit from general training to try European British subjects; or he may, by residence in England or long mixing with Europeans, have acquired that intimate acquaintance with English thought and habit which is necessary to one trying European British subjects, but he may not have the judicial training and ability which are also necessary.

4. I therefore approve of section 2 of the Bill, which makes all Sessions Judges and District Magistrates *ex officio* Justices of the Peace; because these officers, when Natives of India, have shown their general fitness for that post by winning their admission to the Covenanted Civil Service, and their judicial fitness by work and training, which have justified Government in making them Sessions Judges and District Magistrates.

5. But it may be said :—Under the rules made under the Statute 33 Victoria, chapter 3, Natives are now admitted to the Civil Service without undergoing the training and competition through which the ordinary members of the *Covenanted* Civil Service have to pass. These Natives must in course of time become District Magistrates or Sessions Judges and *ex officio* Justices of the Peace, and yet the first condition above mentioned is not fulfilled, for they have not shown their general fitness by winning their admission to the *Covenanted* Civil Service. I admit the flaw, and I would therefore restrict section 2 of the Bill to those Sessions Judges and District Magistrates who are members of the *Covenanted* Civil Service.

6. I know that it has been declared unwise or impracticable to make any distinction between Native Members of the *Covenanted* Civil Service and members of the Native Civil Service under the statutory rules. I would respectfully protest against this view. There is the widest possible difference between the two classes. It is no insult to Mr. A. or Mr. B., who have lately been admitted to the Civil Service under the statutory rules, to say that there is no comparison between them and, say, Mr. Tagore. When Natives complained of the *exceptional* difficulty they felt in sending their sons home to compete for the *Covenanted* Civil Service, the reply, in my opinion, seemed clear :—

It is only natural and proper that there should be *exceptional* difficulty, for a Native who wins a position in the *Covenanted* Civil Service will hold an *exceptional* position; he will take part in the government of the country, having great power over the members of the dominant race. There is no indignity in this expression, for, as long as England is the paramount power in India, so long an Englishman must be a member of the dominant race.

7. It would be impertinent on my part to pursue this subject further, though I would fain show that the *natural* and inevitable result of admitting Natives to the Civil Service by the back-door of statutory rules, and then allowing them to rise to the highest executive and judicial posts, must be that in the end we (Englishmen) withdraw from all share in the government of the country. That may not happen for a long time, and it may be quite right and proper that it should eventually happen; but the point which strikes me forcibly is that we should honestly look at the future and admit that this will be (as far as we can see) the natural result of our policy, and that it is what we intend.

8. The admission of Natives to the Civil Service by the statutory rules, not being now under discussion, must be accepted as a fact which cannot be altered; but we must also accept the fact that there is a vast difference in the training of these gentlemen and in that of those who have won their admission to the *Covenanted* Civil Service by competition, and that difference must be an important factor in considering their fitness to have criminal jurisdiction over European British subjects.

9. If it be ruled that, for sundry reasons, it is advisable to ignore this difference, and that the training and general acquaintance with English thought and habit which Native Civilians under the statutory rules will obtain *after* their admission to the Civil Service may be taken as an equivalent of those advantages which a Native *Covenanted* Civilian has acquired *when* he enters the service (a proposition the truth of which I doubt), then section 2 of the Bill can stand as it is, and *all* Sessions Judges and District Magistrates (whatever their previous training) will be *ex officio* Justices of the Peace.

10. But the Bill goes much further. It gives Government the power to appoint to that office any Native First Class Magistrate who is a member of the *Covenanted* Civil Service or of the Native Civil Service under the statutory rules, or who is an Assistant Commissioner in non-regulation Provinces. (I omit Cantonment Magistrates, as that class (*d*) is admittedly not meant to apply to Natives.)

Now, I presume that it will be admitted that some exceptional safeguards are necessary for the trial of European British subjects. Otherwise, why is there any distinction drawn at all in the Code? Why should a Sessions Judge be able to sentence a Native to death, while he cannot sentence a European British subject to more than one year's imprisonment? So it is only a question of degree. Where shall we draw the line? Shall we say that,

when a Native Civilian has reached the post of Sessions Judge or District Magistrate he shall be *ex officio* fit to exercise this exceptional jurisdiction (a line that is intelligible and easily defined), or shall we say that, after he has passed his departmental examinations and become a First-Class Magistrate, then, *if the Government thinks him fit*, he shall be invested with the exceptional jurisdiction?

11. I respectfully submit that this latter proposal amounts to an unsatisfactory, undefined line. How does Government propose to judge of the fitness in each case? By reports from the High Court as to the "cases" sent up by such and such an officer? I submit that, until the officer has exercised jurisdiction over European British subjects, it would be impossible for the High Court to judge of his capability in that direction. By confidential reports from the District Magistrate? This would be better; but still I submit it would cause grave anomalies. In district A the Magistrate might think that every Native First-Class Magistrate is fit to exercise such powers: in district B the Magistrate might think that in no case should a Native Magistrate have such jurisdiction. And how invidious would be the distinction. In district A there might be a Native First-Class Magistrate of five years' standing exercising the powers, while in district B there might be a Native First-Class Magistrate of seven years' standing not exercising the powers. "Why (the latter would say) am I debarred from exercising the full powers which my junior enjoys? Have I shown myself to be too independent, and is it feared that, if an European British subject comes before me for trial, I shall be unduly severe? Must I truckle to my superiors to attain to the full dignity of my office?" I feel sure that it would be soon found impracticable to draw the line according to the idea of Government as to each man's fitness, and the result would be to lay down a rule that every Native First-Class Magistrate directly he obtains his First-Class powers, or after exercising his powers for six months or one or two years (whatever may be the limit fixed) should have the usual magisterial jurisdiction over European British subjects.

12. But the Bill says that only First-Class Magistrates, who are members of the Covenanted Civil Service or of the Native Civil Service under the statutory rules, or are Assistant Commissioners, shall, when considered fit, exercise these powers. It omits all other Native First-Class Magistrates; and yet the Statement of Objects and Reasons says that the time has come to remove *at once and completely* every judicial disqualification which is based merely on race-distinctions.

On what ground, then, are the numerous Native Mámlatdárs and Deputy Collectors who are First-Class Magistrates disqualified from exercising jurisdiction over European British subjects? They have passed the departmental examinations. The only difference between them and the Native Civilians under the statutory rules is that the former have won their position by good service and ability, while the latter have been selected under certain rules—rules which admittedly do not in the slightest degree touch the question of fitness to try Europeans.

13. The case of a district may be easily supposed where the District Deputy Collector has full executive and magisterial charge of talukas A and B, but cannot try Europeans, while a "statutory rule" civilian has charge of talukas C and D, and can try Europeans. Some of these Deputy Collectors and Mámlatdárs with First-Class powers are able men, and, if the Bill is passed as it stands, it will soon have to be amended in order to correct the "anomaly" pointed out above. Therefore, I submit that the Bill does not remove at once and completely every judicial disqualification which is based merely on race-distinctions. And I also submit that for that to be done completely, that is, both subjectively and objectively, the term "European British subject" must be expunged from our Criminal Procedure Code. Is Government prepared to go that length? If so, let us honestly say that the present amendment of the law is only an instalment of the final corrections of all anomalies to which we look forward in the future.

14. I know that a great deal of "sentiment" has been expressed on both sides of the controversy which has arisen regarding the Bill. But I do not think that on this side of India we can share the fears that our wives and daughters will run the risk of unjust convictions by Native Magistrates, or even of unjust prosecutions on the part of vindictive *darzis* or butlers; what

I do fear is that Native Magistrates in the Mufassal will not have the moral courage to convict an influential Englishman when his punishment is justly due. And, therefore, I recommend that the new jurisdiction should be confined to officers who have attained an assured position, that is, District Magistrates and Sessions Judges, and officers who hold a corresponding rank in non-regulation Provinces (Deputy Commissioners, &c.)

15. To sum up, my opinion is briefly :—

- (a.) If the Bill is not to be a final and complete correction of race-anomalies in our criminal procedure, let this be clearly understood.
- (b.) If the trial of Europeans is to be hedged in with exceptional safeguards, then let the law stand as it is now (that is, that an European should be tried by an European for petty offences and by the High Court in important cases), with this important amendment, which I believe is amply sufficient for administrative purposes, that is, when a Native Covenanted Civilian attains the rank of Sessions Judge or District Magistrate, let him be considered fit to exercise the same jurisdiction as his European colleagues.
- (c.) If for administrative purposes it be thought necessary to go further, then let the statutory Civilian be put in the same rank with the Native Covenanted Civilian.
- (d.) If it be thought necessary to go still further, then let *all* Native First-Class Magistrates have jurisdiction over Europeans, but let there not be any ill-defined line, which leaves everything to the opinion of Government as to the personal fitness of each individual officer, and must perforce shut out many Native Magistrates who are as fit as those to whom the jurisdiction will be given.

(Signed) E. T. CANDY.

LETTER from SESSIONS JUDGE, Púna, to CHIEF SECRETARY to GOVERNMENT, Bombay. (No. 405, dated May 1, 1883).

IN compliance with Government Resolution No. 2258 of April 2, 1883, I have the honour to submit the following observations on the draft Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. I would, in the first place, point out certain flaws in the draft, which appear to me to be due to oversight, and to point to undue haste in preparing the Bill, which is all the more to be regretted considering the amount of opposition and strong criticism the Bill has been subject to since its publication.

3. To begin with, the effect of the proposed amendment contained in section 1 of the Bill will be to exclude all members of the naval, military, and uncovenanted services and all non-official persons from eligibility to be appointed Justices of the Peace. Such a result of the proposed legislation as this could scarcely have been seriously contemplated.

4. Again, why are Assistant Commissioners in non-regulation Provinces and Cantonment Magistrates specially introduced in this proposed amendment of section 22 of the Code? As European British subjects, they are already eligible, and as Natives, in the first place, there is, I imagine, nothing to prevent a Native from rising to the appointment of Commissioner or Deputy Commissioner in a non-regulation Province; so that, under the proposed law, a Native Assistant Commissioner would become eligible to be appointed a Justice of the Peace, while the Commissioner or Deputy Commissioner would, if a Native, be ineligible; and, in the second place, a Cantonment Magistrate is, as a fact, always a European British subject.

5. In the next place, while provision has been made in the Bill to meet the case of Sessions Judges and District Magistrates, there is no reference to Additional or Joint Sessions Judges.

6. With regard to the merits of the Bill, I would submit that, as the opportunity of introducing the proposed amendments was not taken when the present Code was before the Legislative Council of the Governor General,

the removal or modification of the anomaly which the Bill is intended to do away with might very well have been left until some future re-settlement of the law.

7. At the same time, I can see no objection to the proposed amendment of section 25 of the Code; for I think, if any Native member, whether of the Covenanted or the Native Civil Service, is fit to be a Sessions Judge or District Magistrate, he should by virtue of his office be a Justice of the Peace. It is essential that the chief district tribunals to the jurisdiction of which European British subjects are amenable should not be reduced in number, and, therefore, the two principal tribunals in each district should always possess such jurisdiction, whether presided over by Europeans or Natives.

8. A change in the law in this respect is inevitable, and, as the Bill is now before the public, it may be as well to carry it through to this extent. A similar provision in favour of Commissioners, Deputy or Assistant Commissioners in non-regulation Provinces, with a view of preserving a sufficient number of tribunals exercising the necessary jurisdiction, might be introduced in the Bill.

9. Beyond this, I cannot see what occasion there is for any alteration in the existing law. I would, therefore, leave section 22 of the Code as it at present stands, without any amendment, the amendment of section 25 being sufficient for all practical purposes.

10. Section 443 of the Code should be amended by adding the words "or District Magistrate." The amendment of section 444 of the Code as proposed in the Bill is, of course, consistent with the proposed amendment of section 25.

(Signed) E. CORDEAUX.

LETTER from DISTRICT MAGISTRATE, Surat, to COMMISSIONER, NORTHERN DIVISION. (No. 248, dated May 4, 1883).

REFERRING to Government Resolution No. 2258 of the 2nd ultimo, I have the honour to state that, in my opinion, the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, should be so framed as to provide—

- (a.) For the investment with powers over European subjects of all Native members of the Civil Service who may have attained to the position of a District Magistrate, or of a Judge and Sessions Judge, or who may be acting in those appointments;
- (b.) For conferring similar powers on any Native Civilian, being a Magistrate of the First Class, who may have exercised judicial functions for not less than five years, and of whose fitness for the exercise of jurisdiction over Europeans the Government may entertain no doubt.

(Signed) J. G. WHITE.

LETTER from DISTRICT MAGISTRATE, Kanára, to COMMISSIONER, SOUTHERN DIVISION. (No. 2,217, dated May 15, 1883).

In reply to your No. 479P. of April 18, 1883, I have the honour to submit copy of a report by Mr. Todd on the Jurisdiction Bill, and to give my opinion as follows:—

Every officer who rises to the important post of District Judge or District Magistrate must *ex officio* have jurisdiction over Europeans, whether he be a European or a Native.

No Native should be promoted to either of these posts unless Government have good reason to believe he will exercise such jurisdiction with perfect impartiality.

I respectfully beg to submit that in no other case does the law call for any change, and, except in the case of District Magistrates or District Judges, no Native Magistrates outside the Presidency-towns should be invested with jurisdiction over European British subjects.

(Signed) R. E. CANDY.

LETTER from SUB-DIVISIONAL MAGISTRATE, Sirsi, to DISTRICT MAGISTRATE,
Kanára. (No. 452, dated May 7, 1883).

WITH reference to your endorsement, No. 1641 of 11th ultimo, I have the honour to inform you that I consider section 2 of the Jurisdiction Bill, which makes all Sessions Judges and District Magistrates *ex officio* Justices of the Peace, and, therefore, will confer jurisdiction over Europeans on Native Civilians who attain those positions, is quite unobjectionable.

2. In the Bombay Presidency, the positions of Sessions Judge and District Magistrate are attained to only after several years' service, and it appears to me quite unreasonable to suppose that an officer who is fit to perform the duties of the judicial and magisterial head of a district is not fit to be entrusted with the very limited jurisdiction over European offenders given to the Mufassal Courts by the Criminal Procedure Code. Europeans in the Mufassal are at present subject to the control of Native police-officers, and I should think that they would on this account be more liable to insult and annoyance than were they rendered liable to be tried by Native officers in the position of a Sessions Judge or District Magistrate.

3. With regard to the 1st section of the Bill, I think that Native officers under clauses (a) and (b) should not be eligible to be made Justices of the Peace till they had served some time in a magisterial capacity. I would make this term ten years. This would cause no inconvenience, as in every district there is nearly sure to be one or more Civilians of over ten years' service; and after ten years' service Government would be able very accurately to judge whether any Native Civilian would be likely to abuse his powers were he given jurisdiction over Europeans. With regard to the officers mentioned in clause (c), as I have no knowledge of from what manner of persons the post of Assistant Commissioners in non-regulation Provinces (when not Covenanted Civilians) are appointed, I cannot give an opinion as to their fitness to be given jurisdiction over Europeans. With regard to Cantonment Magistrates, I consider that, looking to the particular nature of their duties, military men should, as a rule, hold such appointments, and there can hardly be ever any serious difficulty in finding qualified military officers to fill such posts.

4. For the reason stated in paragraph 4 of this letter, and because Assistant Sessions Judges would not always after three years' service as such have attained to ten years' service, I should alter the proviso to one that he should be of at least ten years' service.

(Signed) J. H. Todd.

LETTER from SESSIONS JUDGE, Ahmadnagar, to CHIEF SECRETARY TO GOVERNMENT, Bombay. (No. 1368, dated June 7, 1883).

IN accordance with Government Resolution No. 2258 of 2nd April last, I have the honour to submit the following remarks on the Bill to amend the Code of Criminal Procedure, 1882.

2. I am unable to understand why there should be any restriction with regard to the persons who may be appointed Justices of the Peace. By the proposed alteration, many persons otherwise admirably qualified will be ineligible for the office of Justice of the Peace; for instance, a Covenanted Civilian, who is a Justice of the Peace up to the date of his retiring from the service, would be ineligible the day following his retirement; and there are several officers who might usefully be invested with the powers of a Justice of the Peace, who, not coming within the classes mentioned in section 22 as amended, or not being First-Class Magistrates, could not be appointed as Justices of the Peace.

3. It may be worth consideration whether Justices of the Peace might not be abolished in India. Such powers as are necessary could be conferred under the Code of Criminal Procedure. If it be deemed necessary to retain the office of Justice of the Peace in regard to matters other than criminal jurisdiction in such cases as is necessary, persons might be invested with the powers of a Justice of the Peace for such purposes as might be requisite only.

4. I adhere to my former opinion that Sessions Judges and District Magistrates or officers occupying positions with similar powers (Assistant Judges, F. P. for instance,) may, if Natives, be vested with the same powers as regards European British subjects as European members of the Covenanted Civil Service holding similar appointments. But I do not think any further alteration in the present law as regards jurisdiction over European British subjects seems necessary. If an alteration be desirable, a beginning might be made by allowing an European British subject to accept, if he desired, the jurisdiction of a Court presided over by a Native officer, who would then have full power to try him as if he were himself an European British subject.

5. It might also be well if benches of Magistrates or Justices were formed, composed of both European British subjects and Natives, who might begin by trying petty cases and eventually be invested with such powers as might be convenient. Or Native Assistant Judges at head-quarters might be empowered to try European British subjects in such cases as were referred to them by the Sessions Judge. In such cases, the accused might, on good ground being shown, object to the order transferring his case for trial, and would be able to apply to the Sessions Judge during the trial, if necessary, with an appeal against conviction if found guilty.

6. I believe the appointment of Natives as Assistant Judges would be in every way satisfactory. They might be selected from the Subordinate Judges, and would supply a cheap and effective means of relieving the District and Sessions Courts. It would, of course, still be necessary that members of the Covenanted Service should be appointed as Assistant Judges to acquire the necessary training, but there are several districts which are at present without any Assistant Judge, and the experiment might be tried in these, at first, of appointing Native Assistants.

7. With regard to the principle of empowering Natives to try European British subjects, the fitness of the trying officers is not so much a consideration as whether it is necessary to deprive European British subjects of the privileges they now enjoy.

8. But, further, the position, feelings, and ideas of the European British subjects most likely to be affected by the proposed changes should be carefully considered. The greater number of these persons belong to classes which always consider a Native, no matter how high his rank, as an inferior. Resistance to the jurisdiction of a Court, and possibly terrorism of the presiding officer, though eventually severely punished, may do much to bring the Court or the officer into contempt, or impair their usefulness, and may injure the officer concerned by destroying his firmness and confidence.

9. For, to be of any use, the Native officers empowered to try European British subjects will have to be stationed, as a rule, at a distance from any superior authority from whom they might obtain countenance or assistance.

10. There is perhaps not much fear that false complaints by Natives against European British subjects would increase if the Court ordinarily used were presided over by a Native in the usual course of things, but it is possible that, in some of the remoter districts European British subjects, if rivals in business, might endeavour to injure one another at a busy season by false complaints presumably made by subordinates against their employers, and these complaints might be met by the accused and his employer's terrifying the trying authorities. But such matters may be left to settle themselves. It will always be open to Government to appoint a European Magistrate where one seems to be required, or to substitute Native for European agency where advisable.

11. It is obvious that, if the number of European British subjects in India increases, as it has a tendency to do, and if the number of officers who can try European British subjects decreases or remains stationary, there must come a time when more or less jurisdiction over European British subjects must be conferred upon Native officers. It is also probable that, if such jurisdiction were conferred, a European British subject would prefer the nearer to the more remote tribunal in the majority of cases. The cases in which a Native Magistrate could try a European British subject would not be numerous, and would usually be trifling in nature; and a busy man would no doubt

prefer to pocket his pride and be tried by a Native Magistrate rather than lose time and money by travelling to and from the Court of the European Magistrate.

12. The term "European British subjects" is, as has been pointed out during the debates on the Bill in the Viceregal Council, "a mere legal creation of the Indian Criminal Procedure Code." The applicability of the term since it was first used has been already more than once changed, and it may be changed again. The present definition is anomalous, because the great grand-children of one brother may be European British subjects and those of another may not, though both brothers may have the same father and mother. And the child of a Native father and mother, if born in England, is an European British subject. It may be that some so-called European British subjects now in office may be, under the Code of Criminal Procedure, really Natives. "Colour has nothing to do with it," as Mr. Gibbs has observed; "a perfectly white person may not come within the definition, while a decidedly dark one may." And it must be in many cases an exceedingly difficult matter for an accused person to prove that he is an European British subject; and if an European British subject is always to insist on trial by an European British subject, he will either have to always carry his credentials with him, or possibly remain in custody or untried till he can procure them.

13. But, though it is easy to point out anomalies and suggest advantages, I think it is a question whether the time has come for so sweeping an alteration as that proposed. It is quite probable that the opposition which the Bill has provoked is in character much the same as that roused by the proposal to open museums, &c. on Sunday in England. The working classes consider that the day of rest itself would by the measure be endangered, and possibly finally lost to them, and they are extremely jealous and apprehensive on the point. Similarly, Europeans in India cannot believe that, if the proposed Bill becomes law, the privileges left to them may not be swept away. Whether they would be any the worse off if their privileges were so removed may be a question, but I certainly think the changes, if made, should be gradual.

(Signed) M. H. SCOTT.

LETTER from DISTRICT JUDGE, Dhárwar, to CHIEF SECRETARY TO GOVERNMENT, Bombay. (No. 698, dated April 10, 1883).

IN reply to Government Resolution No. 2258 of April 2, 1883, forwarding a copy of a Bill, and the Statement of Objects and Reasons therefor, to amend the Criminal Procedure Code of 1882, I have the honour to inform you that, on again reading carefully my confidential letter No. 722 of May 20, 1882, I see no reason, notwithstanding all the agitation which has taken place, to alter the opinion I then gave. My opinion, of course, only extends to the Bombay Presidency, as I have never served elsewhere.

2. I repeat that I think there ought not to be a distinction between European Covenanted Civil Servants and the two Native Covenanted Civil Servants in this Presidency who have entered the service by competition. But, as regards those members of the Covenanted Civil Service who have been more recently put in by selection or patronage, I do not think that, at all events for some years to come, it would be advisable to confer on them any jurisdiction in criminal cases over European British subjects.

(Signed) A. C. WATT.

LETTER from SESSIONS JUDGE, Karáchi, to UNDER SECRETARY TO GOVERNMENT, Bombay. (No. 506, dated April 23, 1883).

WITH reference to Government Resolution, Judicial Department, No. 2258 of April 2, 1883, forwarding for opinion copy of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to submit my views briefly as follows :—

2. I wholly disapprove of the provisions of the Bill. The arguments against the proposed modification of the existing law have been so ably stated by the opponents of the Bill, and notably by Sir James Stephen, that it is needless for me to recapitulate them.

3. I imagine that one of the objects of the Government of India in consulting local officers is to ascertain whether, in the part of India with which they are connected, any administrative inconvenience exists in consequence of Native Magistrates not exercising jurisdiction over European British subjects, such as is alleged by the supporters of the measure. I have been in civil employ in Sind for 23 years and have been a Judge in the province for 20 years, and have never heard of any such administrative difficulties whatever. I feel confident that none exist.

4. If the Government of India, notwithstanding the overwhelming consensus of non-official European opinion against the Bill, are determined to proceed with it, I am of opinion that the proposed jurisdiction should be given only to Natives of the Covenanted Civil Service who have attained the position of Sessions Judge or District Magistrate. In conclusion, I may state that I consider the proposed legislation most ill-timed and wholly unnecessary.

(Signed) G. C. GRANT,
Lieut.-Colonel.

LETTER from DISTRICT JUDGE, SURAT, to CHIEF SECRETARY to GOVERNMENT,
Bombay. (No. 744, dated May 23, 1882).

I HAVE the honour to forward the report called for in Mr. Peile's letter No. 2985, Confidential, of 13th instant.

2. In my opinion, all members of the Covenanted Civil Service, whether European or Native, who have been selected in the ordinary way, but excluding those appointed in India, should be placed on the same footing as regards trying European British subjects. They have entered the service in the same way, they have had a good education to commence with, have passed the same examinations, and have gone through the same training, while those of them who are Natives of India have acquired some knowledge of the ways of Europeans in their own country.

3. The great difficulty in making any changes in such matters is to know where to draw the line and where to stop. Theoretically, all men may have a right to be treated in the same way before Courts of law, before which all are equal. The obligation to obey the law and the liability to be punished for breaking it is the same in the case of all subjects, European or otherwise. A Court entrusted with power to decide whether one man has committed an offence within its cognisance should presumably be able to decide whether any other person has committed that offence. *Primâ facie* no man should be allowed to say to a Court of his land "You are fit to try A.B. for theft, but you are not fit to try me for the same offence." And it might be argued that the law should not speak virtually to that effect, by making personal distinctions as to certain classes, who are not to be tried or are to be tried by particular Courts. And the anomaly seems still greater when the restriction seems in favour of one special class, and is based simply on the nationality of the person tried or of the Judge who tries him. To the philosopher this may seem very unjust.

4. But other considerations come into play, and practically force us to this anomaly, which at first seems so unjust. I shall restrict myself simply to those which seem to me to bear on the restrictions above suggested by me. The very circumstances of the country make it inadvisable in the interests of justice that power to try European British subjects should be given to all Courts. To say, "You shall try some European British subjects, but not all," would be still more unjust than to say, "You shall try no European British subjects," for it would introduce both a personal and a class distinction. In the Presidency-towns, where there are numerous Europeans of all classes, the Presidency Magistrates try all irrespective of race. In large military stations, where there are European regiments, there are Cantonment Magistrates. In most other parts of the Presidency, except in one or two places where there are many railway employés, the Europeans chiefly met

with are men of education and good social position; in many parts they are almost all officials. They are people who may be said never to commit the petty offences for which people are usually tried by the lower grades of Magistrates. Suppose a charge brought against one of them, whom one of these Magistrates acquitted; all the disaffected people in the neighbourhood would at once exclaim that the Magistrate was afraid to convict one who was probably a friend of the Magistrate's superior officer. However proper the acquittal might be, it would, as a matter of course, by many be put down to improper reasons. Now, when we see how often Native newspapers believe every European, especially every European official, to be guilty of every charge brought against him even by anonymous correspondents, it may be imagined what would be the outcry against Europeans who were acquitted by the lower grades of the magistracy. From my own perusal of newspapers it seems to me that some papers believe every European official must be guilty of every offence suggested against him, and every acquittal of a European is considered a failure of justice. Much more would this be the case were Magistrates generally vested with the power to try Europeans.

5. Assuming, then, that for their own sake, and for the sake of justice, all Magistrates cannot be vested with this power, the question comes to be "Who should be so? Where should the line be drawn?" To select some Magistrates and leave out others of the same grade would lead to all sorts of personal reflections, while some who might pass very high examinations would be very unfit to be entrusted with the power. Again, the fact comes into play that the customs of the two races vary very much. It is often a complaint against Europeans that they know very little of the real habits and thoughts of the people of this country. But equally true it is that very few of the Natives of this country know much of our ways. Even of those who come into contact a good deal with Europeans, few understand our social habits, our freedom of intercourse, our domestic matters, or those motives which go so far in forming the rule of life. Here, I think, we have a definite point where the line may be drawn.

6. A civilian who has passed the examinations at home must of necessity have learned much more of European life and customs than one who has not been in Europe, but who, without leaving his own country, has been nominated to an appointment in the service. Living as one in a crowd, he must see more of European life, both good and evil, passing before him than he would do in this country. Wherein our habits differ from those of this country, wherein the motives and principles which mould our lives differ from those of his own countrymen, how the freedom of our domestic and social intercourse varies from what he has been accustomed to, are matters which he will see as a young man in England in a way that he can never do by mere intercourse with Europeans in this country.

7. Since I first thought of the subject when the Criminal Procedure Code of 1872 was under discussion, I have never seen why there should be any distinction of this nature between members of the Civil Service, occupying similar official positions, or why one Sessions Judge or Magistrate (of the Covenanted Civil Service) should have more or less power than another filling a corresponding office. But the "Native civil servants" appointed in India have had neither the same training nor the same advantages of residence in Europe as their countrymen who passed into the service by competition, and this seems to me to give a distinct place where to halt.

8. If the latter (the Native civil servants appointed in India) receive the power under discussion, apart from inherent disadvantages which I trust I have shown to exist, there will be the great disadvantage that there will be continual pressure to advance still further. It would be asked why a Magistrate who had passed his examinations creditably, and done good service, should be prevented from exercising the full magisterial powers vested in a man his equal, who, owing to patronage or interest had acquired one of a few appointments limited in number, and therefore open to very few.

9. We live in an age when everything conceded leads to a demand for still more. In this matter, a very plausible cry might be raised for equality in the powers of Magistrates and Judges without invidious questions of birth and race. An outcry in this country as to this will meet a response from, and be re-echoed by, many in England, who know very little about India,

but will shout for equal justice and equal privileges for all without regard to nationality. If people who receive their appointments, owing to patronage, are vested with the power in question, it will be asked why their countrymen, for whom such appointments from their fewness could not possibly be found but who have obtained equal magisterial rank, and passed examinations in law, should not have the same power. It would be too little effect simply to say, "Because one set was appointed to the Covenanted Civil Service and the others were not." It seems to me that a far more satisfactory answer would be "All who enter the service in the regular way have the full powers of the offices to which they are appointed."

(Signed). G. M. MACPHERSON.

LETTER from DISTRICT JUDGE, Surat, to CHIEF SECRETARY to GOVERNMENT, Bombay. (No. 829, dated May 10, 1883).

I HAVE the honour to forward the report called for in Government Resolutions No. 2258 of 2nd April and No. 2716 of 23rd April 1883.

2. In my Confidential No. 744 of 23rd May 1882 I replied to a letter so far on the same subject, and in it I stated that "in my opinion all members of the Covenanted Civil Service, whether European or Native, who have been selected in the ordinary way, but excluding those appointed in India, should be placed on the same footing as regards trying European British subjects." The reference then made in your No. 2985 Confidential of 13th May 1882 was simply as to members of the Covenanted Service, whether European or Native. The Bill, however, now under report goes beyond that proposal, and includes "Assistant Commissioners in non-Regulation Provinces or Cantonment Magistrates," as well as Civilians entering the service by competition and members of the Native Civil Service constituted under the Statute 33 Vict., chapter 3.

3. In my report above referred to, I expressed a strong opinion that the power of trying European British subjects should not be given to Native Civilians appointed in India. This I supported by showing that an outcry would be raised in favour of giving to Uncovenanted officers, who had done good service and had done well as Magistrates, the same powers as might be given to the Native Civilians appointed without visiting England and studying there, as is necessarily the case with Civilians entering the service by the regular mode of competition. I would beg to refer to that report, and especially here I would quote from paragraphs 3 and 9. "The great difficulty in making any change in such matters is to know where to draw the line and where to stop. We live in an age when everything conceded leads to a demand for still more." These remarks have been most fully justified by the fact that by many organs of Native opinion the concessions now proposed are looked on as only a first instalment, while it is claimed in violent language that every European British subject should be liable to be tried in any Court, without any restriction as to the amount of punishment to be inflicted, so long as it is within the limits laid down by the Penal Code, and does not exceed the general powers of the Court trying him.

4. During my recent absence on privilege leave I learned facts which show that in Bengal the feelings with which many influential but non-official Englishmen living in the Mufassal are regarded by their wealthy neighbours are such as would make it very difficult for a Native Magistrate living in those parts to administer strict and unbiassed justice in disposing of cases involving Europeans.

5. The outburst of race-feeling and animosity with which this Bill has been received by both sides confirms what I learned when absent on leave. I fear that this Bill has done more than almost anything else for long has done to re-kindle feelings of animosity between Europeans and Natives, and that it has thrown us back years as regards any advance that may have been made towards more cordial feelings. I fear Government cannot withdraw the Bill altogether, as to do so would give rise to the thought that violent opposition to proposed legislation would force the Government to give it up. It only remains to see what modifications should be made in the present system.

6. I think there has been a good deal of loose talking and writing on the subject. European Judges and Magistrates have been talked of as "privileged by their race to try Europeans." The "privilege" is that of the prisoner or accused person. A juror who is told to stand aside as objected to is not "privileged" any more than is he who, being unchallenged, acts as juror. The privilege is on the part of the person who can make him stand aside. It is not my privilege that I can try a person whom Mr. Tagore (whose name has so often been mentioned in connexion with this matter) cannot try. It is the prisoner who is "privileged" to claim to be tried by another than Mr. Tagore. I am not aware that much injustice has been caused by the existence of this privilege on the part of European British subjects.

7. Again, it is said, and truly said, that it is an anomaly that this privilege should exist, or that a person entitled to try a Native for theft should not be able to try a European British subject for a similar offence.

8. The question arises whether it is intended to remove all such privileges and anomalies. Many Native gentlemen possess, under section 641 of the Civil Procedure Code, a privilege possessed by no Europeans under that Code, that of exemption from personal appearance in Civil Courts. Section 640 of the same Code exempts many Native women from personal appearance in Court (except when arrested in execution of civil process). These are privileges which tend to defeat justice. Natives look on a person exempt from appearance in Court as so far above the Courts. Examination by commission cannot be as effectual for the ends of justice as examination in open Court. No European lady, however high her rank, is allowed the privilege of these Native women, many of them very uneducated and deficient in culture. Are the people who now cry out so loudly against the injustice, which they allege is caused by the privilege of comparatively few European British subjects, prepared, for the ends of justice and for the sake of equality, to give up these privileges? Of course they are not, and Government has shown no intention of removing these privileges. It is an anomaly that assessors should be asked their opinions when these need carry no weight. To remove this anomaly, except by the abolition of assessors, is impossible. It would certainly be an anomaly that a European lady should be forced to appear as an accused party in the Court of a person whose wife is privileged not to appear even as a witness in a Civil Court. If all privileges and anomalies are not to be swept away, I object to the removal only of those which affect Europeans, while those affecting natives are allowed to remain in full force, especially as this anomaly is productive of good.

9. I have shown in my former report on this subject why I thought that, in the interests of justice, the right of trying European British subjects should not be generally given to Native Magistrates. I regret to say that, since writing that report, I have seen ample reason to justify part of my remarks in actual life. Without going into details, I have seen and learned of cases in which influential Native gentlemen were concerned, in which, though the trying Judge doubtless intended ultimately to act impartially, he gladly availed himself of every opportunity of putting off a decision or an order which might offend an influential man.

10. The proposed Bill would abolish some powers of Honorary Magistrates who are now Justices of the Peace. I understand that in Bengal there are numerous European Magistrates not in the Covenanted Civil Service who are Justices of the Peace. Such people could no longer be appointed under the proposed amendment. Thus, to enable a few people to try cases, many will be disqualified. This will lead to the anomaly that such Europeans will be able to try Natives, but not Europeans.

11. Thus, considering the state of angry feeling on the subject, and the little practical advantage to be gained from the change, I am of opinion that, were it possible, no change should be made at present. But this cannot be. The Government of India has gone too far to draw back. I think every Sessions Judge and District Magistrate should be *ex officio* a Justice of the Peace, and be empowered to try European British subjects. No Magistrate has a right to be a Justice of the Peace, and it is no anomaly that one Magistrate, First Class, should be a Justice of the Peace while another is not. But it is a great anomaly that a District Magistrate or Sessions Judge should not be able to try a European British subject who is liable to be tried by

subordinate First Class Magistrates in the same district. Government select the officers whom they are to appoint to be Magistrates or Sessions Judges in particular districts, and can thus avoid sending particular officers to districts where it would not be advisable that they should be. I think the privileges of *pardánishín* women are allowed to an extent never intended by the Legislature, which would scarcely intend that Native ladies who drive to a bandstand, or Native women who belong to families of low caste but wealthy, should be exempt from appearance in Court as witnesses. But, so long as this is done under High Court sanction, I do not think any Native can reasonably object if an Englishwoman claims to be tried criminally by her countryman; and therefore I would give every female European British subject the right she now has. This of necessity implies that her husband, &c. shall possess the same right. I therefore think that, considering the unfortunate circumstances that have arisen, the only course is to amend the Bill, so that every District Magistrate and Sessions Judge, members of the Covenanted Civil Service, shall *ex officio* be Justices of the Peace, and shall be able to try European British subjects, but that all European British subjects shall have the right of claiming to be tried by a Magistrate or Sessions Judge who is a Justice of the Peace and European British subject. As it would apparently be impossible to distinguish between those Native members of the Civil Service who are selected by competition and those who are appointed in India without leading to never-ending unpleasantness and assertions of right, and as I do not think the latter should, as First Class Magistrates, be Justices of the Peace, I think only the Native members of the service who are District Magistrates or Sessions Judges should exercise the above right.

(Signed) G. M. MACPHERSON.

LETTER FROM ACTING DISTRICT MAGISTRATE, Ahmadábád, to CHIEF SECRETARY TO GOVERNMENT, Bombay. (No. 1066, dated April 12, 1883).

WITH reference to the Bill to amend the Code of Criminal Procedure, 1882, forwarded with Government Resolution No. 2258 of 2nd April 1883, I have the honour to report that the Statement of Objects and Reasons does not seem to me to give any satisfactory reason for changing the law. So long as Europeans are entitled to a trial in the High Court for all but trivial offences, it seems unnecessary to abolish one particular anomaly, especially when there is such a very strong feeling in the European community.

It is not a question which concerns the Native community or any considerable class of it, and the *amour propre* of a few Native Magistrates and Judges cannot be considered to weigh against the very strong feelings of thousands of Europeans.

Ten years have elapsed since the Criminal Procedure Code of 1872, and, if any practical difficulty had been felt, the proposed change would presumably have been embodied in Act X. of 1882, which it is now proposed to alter. This is in itself a strong argument against the existence of any present necessity.

On the other hand, if the Government of India pursue their present policy of introducing a large proportion of Native gentlemen into the service, it will be absolutely necessary for administrative reasons to give Native Judges and District Magistrates the same powers as their European brethren. It is impossible to predict, but I believe that the objection of non-official Europeans will be as strong ten years hence as it is now. It is, I think, much to be regretted that the Bill has been avowedly based on a wish to remove an anomaly instead of on the administrative necessity of having in each district a judicial officer competent to exercise the powers over Europeans in the Mufussal given to Judges and District Magistrates by Act X. of 1872.

4. Speaking of the Bombay Presidency, I am of opinion that some such alteration will have to be made in the course of years, but there is not at present any necessity for it, and that the change should, at any rate, be limited to Judges and District Magistrates and officers of similar functions in non-judicial Provinces.

(Signed) G. B. REID.

LETTER from DISTRICT MAGISTRATE, Dharwar, to COMMISSIONER, Southern Division. (No. 1460, dated 13th April 1883).

WITH reference to Government Resolution No. 2258, dated 2nd instant (Judicial Department), I have the honour to state that, in my opinion, the proposed change in the law is, in this Presidency at least, quite uncalled for. For many years to come the number of cases in which inconvenience would be caused by the present law will be very small. I have not seen a single instance quoted in which inconvenience had been felt. The Bill has been justified on the ground that cases may arise, for instance in Kanára, where the Judge is a Native, in which inconvenience might be felt. Practically, therefore, the present law is not found to be defective. Public opinion in favour of Native Judges and Magistrates was slowly ripening, and, if the Bill had been deferred until the number of these Native officers had increased, and the experience of a few cases had brought the disadvantages of the present law prominently to notice, the change would have met with little or no opposition.

2. Setting aside, however, the policy of making the change when there was no pressing necessity for it, and when it was certain to stir up bitter race animosities, I consider that the removal of the restriction which prevents Native officers of experience and proved ability from trying European British subjects is quite justifiable. The powers which even European Sessions Judges and First Class Magistrates have as regards European British subjects are limited, and Native officers who have risen to either of these ranks may safely be invested with them.

(Signed) J. R. MIDDLETON.

LETTER from COMMISSIONER OF POLICE, Bombay, to SECRETARY TO GOVERNMENT, Bombay. (No. 1879A, dated May 31, 1883).

I HAVE the honour to acknowledge the Resolution of Government in the Bill to amend the Code of Criminal Procedure, 1882; Statement of Objects and Reasons. dated 2nd ultimo, with copies of documents attached and noted in the margin, in which I am called upon for my opinion on the provisions of the Bill to amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects.

2. Perhaps few legislative measures in this country have so largely roused an influential body of the people in the same manner as the proposed Bill to vest Magistrates who are Natives of this country with jurisdiction over European British subjects.

3. In expressing an opinion now on this important question I do so with the advantage of having heard the subject fully and widely discussed in all its bearings, and, with these opportunities, combined with my long police experience, and after weighing the consensus of public opinion, I have arrived at the conclusion that the proposed measure is premature, and, if introduced at the present time, will be calculated to cause serious results prejudicial to the interests of European British subjects in India.

4. It appears to me, however, that the proposed jurisdiction over European British subjects might, in the first instance, be reasonably extended to Native members of the Covenanted Civil Service, and also to those members of the Civil Service nominated in India without competition.

5. The very position of such officers, I submit, demands that the existing anomaly be removed, and their official duties wholly assimilated with those of the European Civilians, as to continue so marked a distinction would not only be invidious, but unquestionably detract seriously from the object which no doubt Government had in view when conferring so great a boon as the throwing open of the Covenanted Civil Service to the Natives of India.

I regret that, through inadvertence, this report should not have been submitted previous to my availing myself of my present privilege leave.

(Signed) F. H. SOUTER.

LETTER from ACTING DISTRICT JUDGE, Shikapur, to UNDER SECRETARY TO
GOVERNMENT, Bombay. (No. 520, dated May 8, 1883).

No. 2258 of 2nd April 1883, calling for opinion on Bill to amend the Criminal Procedure Code, 1882, as regards the exercise of jurisdiction over European British subjects.

WITH reference to Government Resolution marginally quoted, I have the honour to give my opinion as follows.

1. It is proposed to empower Local Governments to invest Covenanted Civilians, members of the Native Civil Service, and Assistant Commissioners and Cantonment Magistrates with power to sentence European British subjects to imprisonment for three months or Rs. 1,000 fine. It is also proposed to give all Sessions Judges and District Magistrates jurisdiction over Europeans.

2. The measure has, no doubt, been much misunderstood by the general public, and grossly misrepresented by individuals who must have known its import.

3. As regards the extension of the jurisdiction of First Class Magistrates, I have the honour to state that, in my opinion, no advantage would be attained by the abolition of the peculiar privilege of European British subjects commensurate with the uneasiness and alarm which, it appears, such abolition would excite.

4. I am not aware of any practical inconvenience having ever arisen from the restrictions heretofore placed on the jurisdiction of First Class Magistrates over European British subjects. The only inconvenience which suggests itself to me as likely to arise in some exceptional cases is that a European charged with some petty offence might, under the present law, have to be sent to another Magistrate in the same district to undergo his trial. As, however, there are generally several European Magistrates in a district, and an accused could always waive his privilege under section 454, this does not appear to call for a change in the law.

5. I do not think that objection can reasonably be taken to the existing state of the law merely on the ground that it preserves race distinctions, or that the proposed change would efface those distinctions from the Code.

6. The peculiar procedure which applies to Europeans is defensible on other grounds than invidious race-distinctions. Very few Mufassal Magistrates have lived for any length of time in Europe or know very much of European customs. Both to the Magistrate and to the accused it would be a decided disadvantage, in cases against or between Europeans, to have the proceedings conducted in a language which was neither common to both, nor the language in ordinary use in the Court. Mufassal Magistrates, moreover, have not, as a rule, any special judicial training. In cases where race feeling would almost invariably arise, the appreciation of evidence would present exceptional difficulties. This seems to have been recognised by the legislature in limiting the jurisdiction of even European British Magistrates to petty cases. It is not proposed to do away with this last-mentioned limitation of jurisdiction. It cannot, therefore, be said that the change would efface all race-distinctions.

7. I do not myself think that the safety of Europeans would be at all endangered by the proposed change. I think it is quite as likely that Native Magistrates would err, in such cases, on the side of leniency as on the side of severity. But the fact that the class to be affected by it regards the measure with distrust and alarm, and that no material advantage would be secured by it, is, in my opinion, a sufficient ground for abandoning a measure which seems likely to produce no results but the race animosity which it is intended to dispel.

8. As to the jurisdiction of Sessions Judges, I think the case is different. There is only one Sessions Judge to a district where there may be many First Class Magistrates. If the present disqualifications are preserved, the greatest inconveniences might occur. A European committed on a petty charge by a fellow countryman would have to go, in many cases, hundreds of miles, perhaps in custody, for trial by a High Court, and the expenses of the proceedings would be very considerable. A Native Civilian who has power to pass sentences of death on fellow natives of other castes and creeds must be monstrously unfit for his post if, after all his training and experience, he

is not to be trusted to pass sentence of a year on a European or to transfer the case to a High Court. I fail to see any ground for disqualifying such Native officers except race-distinctions, which could not be otherwise than invidious.

(Signed) H. BATTY.

LETTER from JUDICIAL COMMISSIONER, Sind, to CHIEF SECRETARY TO GOVERNMENT, Bombay. (No. 991, dated May 19, 1883).

WITH reference to Government Resolution No. 2258 of the 2nd ultimo, I have the honour to state that, though, in my opinion, it would have been advisable, for the reasons given in my letter No. 1003 of the 2nd June, 1882, to have postponed any legislation for the amendment of Chapter XXXIII. of the Code of Criminal procedure, 1882, for a few years, that is, until a further and general revision of the Code became necessary, still, as a Bill has now been introduced for the amendment of the Code so far as it relates to the exercise of jurisdiction over European British subjects, it is necessary to proceed with it.

2. I am of opinion that the proposed legislation should be limited, at present, to the following objects:—

- (1.) The exception as regards Presidency Magistrates in section 443 of the Code should be extended so as to embrace Magistrates in certain large towns, which should be named in the Bill.
- (2.) In all magisterial districts, the District Magistrate, whatever his race may be, should be made a Justice of the Peace, so as to give him power to enquire into and try charges against European British subjects under section 443.
- (3.) In section 444, the words "unless he himself is an European British subject" should be omitted, so as to give all Sessions Judges equal jurisdiction.

It seems obvious that an officer who is fit to be entrusted with the duties of a Sessions Judge or a District Magistrate is fit to deal with all classes of cases which may come before him, whatever may be the race of the accused person. If any member of the Covenanted Civil Service showed by his conduct, in any way during the earlier years of his service, any unfitness to deal with any special kind of work which might come before him in a Court of Session or District Magistrate's Court, he would never, it may be presumed, be appointed to preside in any such Court.

- (4.) The restriction as regards Assistant Sessions Judges in the latter part of section 444 should be retained, whatever be the race of the Assistant Judge, and, as regards Magistrates below the rank of a District Magistrate, only those should be made Justices of the Peace (whatever their race may be) who have exercised magisterial powers for a certain number of years, say for at least five years, and whose fitness to be appointed Justices of the Peace has been ascertained by the District Magistrate and reported by him to Government.

3. I do not think that any further modification of the Code of Criminal Procedure is at present desirable. The modifications I have suggested will not affect any substantial privileges at present enjoyed by European British subjects. They will not affect the limited punishments to which offenders can be sentenced by Courts of Session and Magistrates; while they will remove the invidious distinction which now exists between two classes of Covenanted Civil Servants in respect of their power to deal with certain cases.

4. It may be right, when the Bill comes again before the legislature, to consider whether its provisions should be extended equally to all parts of India. In the Bombay Presidency, the moderate changes of the law which I have above proposed could probably be introduced without causing any strong dissatisfaction among any class of the community.

(Signed) H. BIRDWOOD.

No. 11.

LETTER from CHIEF SECRETARY TO GOVERNMENT, Bombay, to SECRETARY TO GOVERNMENT of INDIA, Legislative Department (No. 4402, dated 28th June 1883).

IN continuation of my letter No. 4005,* dated the 14th instant, I am directed to transmit, for the information of the Government of India, copy of a supplementary opinion forwarded by the Hon. the Advocate General, Bombay, on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

* Printed as Paper No. 9.

(Signed) C. GONNE.

Enclosure referred to in foregoing Letter.

Supplementary opinion by the ADVOCATE GENERAL of BOMBAY on the ILBERT BILL (dated 19th June 1883).

IN continuation of my No. 31 of 1883 I beg to say that I think it inexpedient that the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects should in its original or in any modified form become law.

The objects and reasons for the Bill state that the Government of India has decided to remove from the Code any judicial disqualification which is based merely on race-distinction.

I think this very race-distinction (which cannot be removed by any legislative enactment) is the very reason why the Bill should not be passed.

The position of Englishmen in India differs *in toto* from their position in any Christian country in which they may settle—in a Christian country they would intermingle with and form a part of the society in which they dwell. But in India the Englishman dwells apart from the Natives by whom he is surrounded, and this is attributable not to the character of Englishmen but to the immiscible character of the Native. His religion, customs, thoughts, ideas, character, and above all his caste prejudices prevent his mixing with Europeans. The following passage from the celebrated Judgment of Lord Stowell in the case of the Indian Chief is as applicable now as when it was delivered in 1801:—"In the East from the oldest times an immiscible character has been kept up—foreigners are not admitted into the general body, and among the society of the nation they continue strangers and sojourners as all their fathers were. *Doris amara suam non intermiscuit undam.*"

In no sense do Natives in this country form the friends, associates or equals of Englishmen, and it is I believe, in fact, to that feeling that the universal condemnation of and antipathy to the Bill by the whole English non-official community is and justly to be ascribed. Every Englishman carries about with him the feeling that it is his birth-right to be tried by his peers, a right given to him by Magna Charta. "*Nullus liber homo capiatur vel imprisonetur.....aut aliquo modo destruatur nec super eum ibimus nec super eum mittemus nisi per legale iudicium parium suorum vel per legem terre.*" The Englishman feels that if tried by a Native he will not be tried for "*legale iudicium parium suorum.*"

By Act IX. of 1874, section 30, the Viceregal Legislature deprived vagrants who were European British subjects of their privileges as such as a badge of disgrace. At the instance of one man the Viceregal Legislature is now asked to deprive the thousands of Englishmen now in India of these same privileges.

There is also the belief that an Englishman if tried by a Native Judge upcountry away from his friends, without European legal assistance and without a vigilant European Press might not have justice done him. After 20 years' professional experience in this country and in a Presidency-Town, I regret to say I consider that belief well-founded.

My No. 31 was written in answer to a request that I would state my opinion on the proposed modification of the Bill, consequently I did not then give my opinion on the merits.

(Signed) JOHN MARRIOTT,
Advocate General.

No. 12.

LETTER from the CHIEF SECRETARY TO GOVERNMENT, Bombay, to SECRETARY TO GOVERNMENT OF INDIA, Legislative Department. (No. 4652, dated July 9, 1883).

IN continuation of the papers forwarded with my letter No. 4026, dated the 15th ultimo, I am directed to transmit herewith, for submission to the Government of India, copies of the opinions marginally noted received from the Agents, Great Indian Peninsula, Bombay, Baroda, and Central India, and Southern Mahratta Railway Companies, and from the Manager, Bhavnagar-Gondal Railway, on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

(Signed) C. GONNE.

Enclosures referred to in preceding Letter.

LETTER from AGENT, GREAT INDIAN PENINSULA RAILWAY COMPANY to CONSULTING ENGINEER for RAILWAYS, Bombay. (No. 5364, dated May 30, 1883).

IN reply to Government Resolution No. 609 of the 11th April, calling for a report on the proposed Bill to amend the Code of Criminal Procedure, 1882, I feel very doubtful if the time has yet arrived for the introduction of such a sweeping change in the administration of criminal law, and I greatly fear it will be productive of far more injustice than can possibly be compensated for by the removal of the supposed anomaly which has given rise to the Bill; and I earnestly hope that the objections to the proposed amendment of the law as set forth in the memorial of the Bombay Chamber of Commerce (of which I am a member) to his Excellency the Viceroy and Governor-General may add a little strength to the appeals that have been made by other representative bodies in India, and induce the Government to postpone for the present further consideration of the measure.

(Signed) G. A. BARNETT.

LETTER from AGENT, BOMBAY, BARODA, and CENTRAL INDIA RAILWAY COMPANY to CONSULTING ENGINEER for RAILWAYS, Bombay. (No. 3105, dated May 11, 1883).

WITH reference to Bombay Government Resolution No. 609, dated 11th April, I have the honour to state that, in my personal opinion, the amendments proposed by the Government of India to be introduced in the Code of Criminal Procedure, with a view to "remove from the Code, at once and completely, every judicial disqualification which is based merely on "race-distinctions," are consistent with the general course of Indian legislation for the past 25 years, and, though brought forward now at an unfortunate moment, embody a just principle, the operation of which could not be much longer consistently withheld in its application to those Native Magistrates who have qualified for the positions of Sessions Judge or District Magistrate under the rules laid down by Government itself, and shown their fitness to exercise the powers attached to those positions.

2. I would suggest, however, the substitution of "five years" for "three years," in the amended draft of section 444 of the Code embodied in section 4 of the Amendment Bill, as the period within which no Assistant Sessions Judge shall exercise jurisdiction over European British subjects; the longer period affording greater security for the display of trustworthy qualities in the individual officer, and furnishing Government with fuller opportunities of judging of his character and ability, before entrusting him specially with that jurisdiction. The powers reserved to Local Governments in this latter respect will, I do not doubt, be exercised with discretion, but, in extending the jurisdiction of selected Native Magistrates over Europeans in this country, it seems to me desirable that strong guarantees of their personal fitness for the wise exercise of the power to be entrusted to them should be insisted upon.

(Signed) T. W. Wood.

LETTER from AGENT, BOMBAY, BARODA, and CENTRAL INDIA RAILWAY COMPANY, to CONSULTING ENGINEER for RAILWAYS, Bombay (No. 3964, dated 18th June 1883).

In reply to your letter of the 15th instant, No. 2269, I have the honour to state that, so far as I can judge, the effect of the alteration in the law contemplated by the Criminal Jurisdiction Amendment Bill now under consideration will, in the districts traversed by this Company's Railway, be hardly perceptible for at any rate many years to come, even if the Bill should be passed in its present form.

2. It may, however, be fairly presumed that the crucial examination and public criticism on all sides that the Bill has undergone will ensure such safeguards being introduced in its final form as will provide every reasonable security and protection for the just rights of such Europeans as may come under its operation.

3. The opinions I have submitted to Government on the subject are those that my personal judgment leads me to form. As regards the views on the measure held by the European employés of this Company, I have no data on which to reply to your inquiry, except the fact, which I think indicates the absence of any strong feeling amongst them on the matter, that no representation from them on the subject has been made to me. In the early days of the public discussion of the measure, the Traffic Manager brought to me a letter he had received from the Traffic Manager of the East Indian Railway, inquiring what the members of this Company's service intended to do in the matter; but, on my declining to sanction the fostering of any similar agitation on this railway to that carried through on the East Indian line, the matter went no further. If a spontaneous movement had taken place amongst the European employés on this railway in opposition to the Bill, I should have felt it my duty to represent the facts to Government.

(Signed) T. W. Wood.

LETTER from AGENT, SOUTHERN MAHRATTA RAILWAY COMPANY, LIMITED, to CONSULTING ENGINEER for RAILWAYS, Bombay (No. 1971, dated 19th June 1883).

In response to Government Resolution No. 609 of 1883, I have the honour to record my opinion on the subject of the Bill to amend the Code of Criminal Procedure as affecting the interests which I represent.

I am not aware that the proposal to extend the judicial powers of Native Magistrates over British-born subjects has excited any great alarm amongst the employés of this Company, but this I attribute very much to the fact that, under existing circumstances, the amendment would, for the present, be inoperative in the districts traversed by this railway, and also to the fact that as yet there are comparatively few individuals in the permanent service of the company who would be personally affected by the proposed change in the law.

I believe, however, that the general feeling of the European section of the Company's staff is decidedly adverse to the measure.

For my own part, I should deplore the amendment as a step in a dangerous direction, which would certainly excite agitation for, and probably be followed by, further concessions, and I should dread the effect of any measure which would give *mámlatdárs* or subordinate Native officials increased authority over railway employés.

I think it is much to be regretted that the Bill was ever introduced at all. By giving rise to an unfortunate feeling between sections of Her Majesty's subjects, it has already done harm which cannot now be remedied; and, in my humble opinion, the object in view is not of sufficient importance to make it desirable that the Bill should be passed in spite of the widespread and deep-rooted opposition that has become manifest.

I cannot see any real necessity for such a change in the law. So long as special rights and privileges are reserved for Natives, and due consideration is shown for their religious and social prejudices, I do not think it is unreasonable that Europeans should have the privilege of being tried by their own countrymen.

So far as mental attainments are concerned, I have no doubt that there are many Natives of India who are fully competent to exercise jurisdiction over Europeans; but I do not think that any argument in favour of judicial equality is complete without taking into consideration questions of feeling and the prejudices due to race distinctions.

While Natives refuse to associate with Europeans on terms of social equality, and while their domestic habits and ideas are such as to stand in the way of personal sympathy, I can see nothing anomalous in the judicial disqualification imposed by the existing Code of Criminal Procedure.

As I have been invited to express my opinion, I have no hesitation in saying that I think the Bill is ill-timed and premature, if not altogether uncalled for, and I hope that further discussion on the subject may be averted by the withdrawal of the measure.

(Signed) G. M. STEWART.

LETTER FROM MANAGER and ENGINEER-IN-CHIEF, BHAVNAGAR-GONDAL RAILWAY, to CONSULTING ENGINEER for RAILWAYS, Bombay (No. 1254, dated 26th May 1883).

With reference to Bombay Government Resolution No. 609, dated 11th April 1883, and this office letter No. 910, dated 14th April, and your reply No. 792, dated 21st April 1883, I have the honour to state that I think, as so much has been written about Mr. Ilbert's Bill "to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects," I had better simply report that, as far as I have been able to gauge the feeling of the European British employés of the Bhavnagar-Gondal Railway, the objects of the proposed Bill are utterly distasteful to them.

2. I feel certain, if individual opinion was asked for, not a single man would dissent from the opinion reported in the foregoing paragraph.

(Signed) H. DANGERFIELD.

No. 13.

LETTER from the OFFICIATING REGISTRAR of the HIGH COURT to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

No. 866.

SIR,

Calcutta, May 23rd, 1883.

IN reply to your letter, No. 16 C. of the 16th March 1883, asking for

HIGH COURT,

ENGLISH DEPARTMENT, CRIMINAL.

Present :

The Hon. Sir Richard Garth, Knight,
Chief Justice.

The Hon. H. S. Cunningham,

" W. F. McDonell, V.C.,

" H. T. Prinsep,

" L. R. Tottenham,

" A. T. Maclean,

" J. F. Norris,

" J. Q. Pigot,

" J. O'Kinealy,

" C. J. Wilkinson,

" W. Macpherson,

Judges of the Court.

an expression of the Judges' opinion on the provisions of the Bill to amend the Code of Criminal Procedure, so far as it relates to the exercise of jurisdiction over European British subjects, I am desired to say that the Judges have considered the Bill, together with its annexures, and the abstract of the proceedings of the Legislative Council, so far as they relate to that measure.

2. The Judges consider it to be their duty to express without reserve the views which they entertain not only upon the form and language of the

Bill, but on its general policy and probable effects.

3. The Statement of Objects and Reasons sets forth that, " after consulting the Local Governments, the Government of India has arrived at the conclusion that the time has arrived for modifying the existing law and removing the present bar upon the investment of Native Magistrates in the interior with powers over European British subjects; and that the Government has accordingly decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race distinctions."

With this view the Bill amends section 22 of the Criminal Procedure Code, which at present restricts the appointment of Justices of the Peace to European British subjects, by empowering the Government to appoint any Magistrate of the first class, who is either (a) a member of the Covenanted Civil Service, or (b) a member of the Native Civil Service constituted under 33 Vict. c. 3, or (c) an Assistant Commissioner in Non-Regulation Provinces, or (d) a Cantonment Magistrate, to be a Justice of the Peace.

4. The Bill next amends section 25 of the Code, so as to provide that all Sessions Judges and Magistrates of the District shall be Justices of the Peace for the territories of the Local Government under which they are serving. It then repeals so much of sections 443 and 444 of the Code, respectively, as limits jurisdiction over European British subjects to such Magistrates and Sessions Judges as are themselves European British subjects.

5. Accordingly, if this Bill becomes law, the effect will be that (1) all Native Sessions Judges and Magistrates of the District will, *ex officio*, exercise the same jurisdiction over European British subjects as is now exercised by European officials of the same class; and (2) the Government will be empowered to invest any Native Magistrate of the first class, who is either a Covenanted Civilian, or has been appointed under 33 Vict. c. 3, or is an Assistant Commissioner in a Non-Regulation Province, or a Cantonment Magistrate, with the jurisdiction over European British subjects, which by the existing law is restricted to European British subjects.

6. Thus a Native Magistrate, who has been appointed to be a Justice of the Peace, will have jurisdiction (1) to inquire into any charge against an European British subject and either commit him to the Sessions Court or High Court; or, (2) if the offence be one ordinarily triable by a Magistrate, to try it and impose a sentence of three months' imprisonment or fine up to Rs. 1,000, or both. A Native Sessions Judge or Assistant Judge empowered under section 444 will be competent to try an European British subject for any offence not punishable with death or transportation for life,

and to impose a sentence of one year's imprisonment or fine of unlimited amount, or both. Cases for which, in the Sessions Judge's opinion, such a punishment is inadequate will be transferred to the High Court.

7. Offences punishable with death or transportation for life will remain, in the case of European British subjects, exclusively triable by the High Court. The European British subject will retain his right, under section 451, of claiming a mixed jury or mixed assessors, his special rights of appeal under Chapter XXXI., and his right of applying to the High Court under section 456 in case of unlawful detention.

8. It must be remembered that in India the powers of police investigation, magisterial inquiry, and judicial trial are closely connected and are frequently combined in the same official. Under the Code of Criminal Procedure, as it now stands, any District or Sub-divisional Magistrate, as well as any other Magistrate specially empowered in this behalf (section 191), may take cognizance of any offence, that is, initiate criminal proceedings in respect of any offence (1) upon a complaint made, (2) upon a police report thereof, (3) upon information received from any person other than a police officer, or (4) *upon his own knowledge or suspicion*, that such offence has been committed.

9. It is the duty of the District or Sub-divisional Magistrate to direct investigations by the police. He receives their daily reports, and very often has to instruct them on points which he may think that they have overlooked or misapprehended. It sometimes even happens that the investigation is taken out of the hands of the police and conducted by the Magistrate himself (section 159). The result of this is that a chief local Magistrate practically becomes the prosecutor and may become the Judge, notwithstanding that he may have formed a strong opinion on the case behind the back of the accused without having heard his explanation or defence. This is the system in force in India; and although it is probably, for administrative reasons, unavoidable, it is an extremely dangerous system. It has certainly provoked adverse criticism; that it has not provoked more is probably due to the careful superintendence bestowed by District Magistrates, who have in Bengal hitherto been English gentlemen of the Covenanted Civil Service, whose education and training have made them fully sensible of the responsibilities which such a system as that described imposes on them in their own proceedings and also in supervising the proceedings of their subordinate Sub-divisional Magistrates. The present law protects European British subjects from the exercise of this dangerous combination of duties by any one but their own countrymen. The Bill under consideration proposes to remove this protection.

10. The general result, accordingly, of the proposed amendments will be to leave European British subjects in the possession of various important rights as regards the class of officer who can commit or try them, the form of trial, the right of appeal, and the power of invoking the aid of the High Court when they are unlawfully detained in custody; but to deprive them of the right, which they at present enjoy, that in every case the inquiry or trial shall be conducted by an European British subject. It will become the duty, *ex officio*, of Native officers of a particular class to commit or try European prisoners, even in cases in which, in person or through the police, they have initiated investigations affecting them; and the Government will be empowered to select from a wide area such other Natives as it thinks well to invest with such powers.

11. The position in which European British subjects would be placed by the proposed changes is one which they have never yet occupied, and in which the Legislature has on several occasions deliberately determined that it would not be wise to place them. On a review of the course of legislation since 1793 it is impossible, the Judges consider to doubt that the intention and practice of the Government has been to surround the investigation and trial of offences charged against European British subjects in the Mofussil with special precautions, and amongst those precautions to restrict the jurisdiction in such cases to European officials. Any doubts which the wording of particular Acts, as, *e.g.*, Act VII. of 1853, might have occasioned, have been removed by the express declarations of the Codes of 1861 and 1872, in both of which this restriction was deliberately enacted.

12. On the other hand, as regards European officials, the result of the proposed change will be to curtail considerably the powers now exercised by Government in the appointment of Justices of the Peace. At present the Government can appoint such European British subjects as it thinks fit to be Justices of the Peace. This power has been hitherto extensively employed, and Europeans, other than Covenanted Civilians, have been appointed to be Justices of the Peace, and dispose, in a manner which the Judges believe to be satisfactory, of cases in which Europeans are concerned. Under the amended section the Government will be unable to appoint any one who does not fall within one of the four classes specified in the amendment. There are at present in Bengal many such Justices of the Peace whose appointments would have been impossible under the amended section.

13. The first argument adduced in favour of the proposed change in the law which the Judges propose to consider is that on which His Excellency the Viceroy grounded his support of the Bill in the discussion of the 9th March in the Legislative Council, viz., the expediency of taking at once a step which the policy of admitting Natives to the service rendered sooner or later inevitable. "It is surely clear," His Excellency observed, "that though there is not at the present moment an irresistible necessity for introducing this measure, as Lord Lytton's system develops, an irresistible difficulty will arise. When you have one-sixth of the Civil Service composed of Natives, it will be impossible to maintain the present restriction. Therefore what we had to consider was—is it better to wait until this necessity becomes overwhelming and irresistible, or is it better to introduce the system now? I confess it appears to me that it is far wiser and far more in the true and substantial interests of those over whom this jurisdiction is exercised, that it should be introduced now, when the persons who would obtain these powers are very limited in number; when the circumstances under they which enter the Civil Service ensure their ability and character, and when all their proceedings can be carefully watched. Being few in number, it will be easier now than afterwards for attention of the Local Governments and the public to be directed to their proceedings, and, being the men they are, it seems to me that they would be likely to set a good example and give a good tone to those who come after them. I hold it, therefore, to be wiser to introduce the measure now, gradually, cautiously, and tentatively, than to wait till the change is forced upon us by necessity, and the powers which are now to be given only to a few men have to be given suddenly to a very much larger number of Native Civil Servants. This is the ground upon which I thought that the time had come when this change could best be made."

14. The Judges fully appreciate the necessity of adjusting the judicial machinery of the Courts to the declared policy of the Secretary of State as regards the employment of Natives in the judicial service. But they do not perceive that that policy necessarily involves any such change as that now suggested; nor in any case do they consider that the proper moment for making such a change has arrived, or that materials at present exist for deciding on the form which it ought to assume.

The accompanying table shows that of the Civilians on the Bengal List there are at present twelve Natives, either Covenanted Civilians, or persons admitted under 33 Vict. c. 3. Of these, two have been over 11 years in the service, one over 10, one over 9 years, one has been over 7 years. The rest have been under 5 years, and of these five have served less than 3 years. Moreover, since 1875 only one Native Civilian has passed through the competitive examination, and that was in 1879. Since that year all the admissions have been under the Statute. There are, accordingly, only four officers who, in the ordinary course, would for some time to come be either Magistrates of the District or Sessions Judges. As regards the rest no question is likely to arise for several years.

Names of Native Civilians appointed— (1) In England, and (2) In India.	Date of joining the Service.	Appointments held.		Approximate Years when Officers will become eligible for appointment either as		Remarks.
		Substantive Appointments.	Officiating Appointments.	Officiating Magistrates.	Or as Officiating Judges.	
<i>Appointed in England.</i>						
Mr. R. C. Dutt	10th July 1871	Joint Magistrate, 2nd grade	Magistrate and Collector, 3rd grade.	—	—	He was first appointed to officiate as a Magistrate in Sept. 1881. He has elected the Judicial line. On furlough. He was appointed to act as a Magistrate in Aug. 1880. He has been offered an Acting Magistracy. — — — — —
" B. L. Gupta	Ditto	Presidency Magistrate	Nil	—	1883	
" A. Burooah	9th July 1872	Joint Magistrate, 2nd grade (<i>Substantive pro. tem.</i>)	"	—	—	
" K. G. Gupta	30th June 1873	Assistant Magistrate and Collector	Joint Magistrate, 1st grade	—	—	
" B. Dé	19th July 1875	Do. do. do.	Joint Magistrate, 2nd grade	1884	1886	
" K. J. Badshah	8th Sept. 1879	Do. do. do.	Nil	1886	1888	
<i>Appointed in India.</i>						
Koomar Rameswar Sing	2nd Mar. 1878	Assistant Magistrate and Collector	Nil	1888	1890	—
Baboo Nanda Krishna Bose	27th Jan. 1880	Do. do. do.	"	1888	1890	—
Koomar Girindro Narain Deb	28th Dec. 1880	Do. do. do.	"	—	—	Has not yet passed the departmental examination by the Higher Standard. Do. do.
Baboo Gopendra Krishna	3rd Nov. 1882	Do. do. do.	"	—	—	Do. do.
Koomar Sattya Sree Ghosal	3rd Feb. 1880	Do. do. do.	"	—	—	Has yet to pass by the Lower Standard. Do. do.
Maulvi Ashunuddin Ahmed	27th Dec. 1881	Do. do. do.	"	—	—	Do. do.

N.B.—The last four officers have not yet passed their examinations completely, and as officers are not considered eligible for promotion until they pass fully, it is difficult to determine the probable time when they will rise to the rank of Officiating Magistrates or Officiating Judges. It takes an officer 7 years or thereabouts from date of passing to rise to the position of an Officiating Magistrate, and about 9 years to get an Officiating Judgeship.

15. These figures appear to the Judges to indicate that the question of the jurisdiction of Native Civilians over European British subjects cannot be regarded as in any way pressing for immediate solution. Though it may be intended that Native officials shall ultimately constitute a sixth of the entire Civil Service, there do not appear to be grounds for expecting that this intention will be realised for many years to come. It would appear, moreover, that various causes have, of late years, led Native candidates to refrain from seeking admission to the Civil Service by the competitive examination, and that the main body of Native Civilians will for the future be those who are appointed in this country under 33 Vict. c. 3. Such a state of things scarcely seems to justify prospective legislation on the ground that an irresistible necessity is impending, which can be at present more conveniently and safely met than at a later date. The Covenanted Native Civilians, who have passed into the service by the competitive examination, constitute, it is apparent, a small and dwindling class. So far as can be judged at present, the supply has come to a standstill; nor, as to admissions under 33 Vict. c. 3., does it appear that the Local Governments have found it feasible to carry out the provisions of the Act except on a very limited scale. Three officers appear to have been appointed in Bengal in 1880, one in 1881, one in 1882. At present, therefore, the measure can, it is obvious, scarcely be regarded as having passed beyond the stage of an experiment. How these officials will turn out is a question on which it is at present, and must be for some years to come, impossible to form any confident opinion. Even as regards the earlier appointments, the Judges are of opinion that they have been too few in number, and, in the majority of instances, have lasted for too short a time, to afford material for any safe generalisation, or to justify, on the ground of ascertained fitness, a change in the policy of Government which would take away from European British subjects a privilege which, it is apparent, they regard as of high value and importance.

16. If some years hence, owing to the number of Native civilians having greatly increased, any administrative difficulty should arise and a change in the existing arrangements be considered necessary, such a change will, the Judges think, be more safely made at a time when there are better means than at present of judging both of the administrative difficulties which have to be met, and of the capacity and character of the class of officials whose powers and responsibilities it will have the effect of enlarging. The increase in the number of Native officials will not render the supervision of their behaviour in any way more difficult than it is at present. On the other hand, longer experience and a better acquaintance with the particular points, as to which supervision is found to be necessary, would enable the superintending authority to perform its duties more efficiently. At any rate legislation, should it hereafter be necessary, would proceed on a basis of practical experience, not, as it is likely to do now, on mere conjecture as to the conduct and character of officers about whom scarcely anything is known.

17. In considering the question whether legislation is at present advisable, it is necessary to keep in view the wide distinction which exists between Native officers who have entered the Civil Service by competitive examination in England, and those who are nominated under 33 Vict. c. 3., in this country. The Judges are not prepared to admit that, even as regards the former class, the proposed change in the law is in any way necessary or desirable; but here there is, at any rate, some guarantee for ability, moral character, and such insight into the feelings of Englishmen as a short residence in England may be supposed to confer. On the other hand, with the statutory civilians there is absolutely no guarantee against the existence of the very defects which constitute the grounds of the reluctance of European British subjects to submit to their jurisdiction in criminal trials. They are described by the Judicial Commissioner of Oudh in a document, forwarded by the Lieutenant-Governor of the North Western Provinces with his own reply to the Government of India, as "often being men saturated with caste and religious prejudice and ignorant of European modes of thought and feeling." One object of the statute was, the Judges believe, to enable the Government to enrol in the ranks of its service native gentlemen of high

birth and social position. It is easy to imagine cases in which a gentleman might have on these grounds great claims to a nomination under the statute, who might yet be conspicuously deficient in many of the qualifications which are admittedly essential in the Judge who is to deal with cases in which European British subjects are concerned. It must be remembered that it is with officials of this class, not with successful competitors in the Civil Service Examination; that, in considering the present question, we have principally to deal; nor can the Judges lose sight of the fact that these statutory civilians will be appointed by a system of nomination which was abandoned by the Government 25 years ago in favour of competitive examination, and which can scarcely be expected to work more satisfactorily in India than it did in England. On the officers thus nominated the proposed change will confer a jurisdiction unknown to English law, a combination of inquisitorial, magisterial, and judicial powers, which may be justified by the necessities of the case of India, but which Englishmen in India may with some reason contend, should continue to be exercised in their own case, as it is at present, only by officials for whose competence or character they have some adequate guarantee.

18. The apprehensions which many Europeans entertain as to the results of the proposed change are not, in the Judges' opinion, without foundation. There is no doubt that the position of Europeans in the Mofussil has many disadvantages. They are often completely isolated, they live among people alien to themselves in religion, nationality, social habits, and political ideas. As owners of property and employers of labour, they are necessarily brought into collision with classes or individuals whose interests conflict with their own; and it is impossible to ignore the fact that such a state of things exposes them to very considerable risks. The attention of the Government was forcibly drawn to this fact by the Honourable Sir Stuart Bayley in the debate of March 9th. "There is," he said, "another aspect to the case of 'the opposition which I think deserves most attentive consideration, and 'this is the real danger which the isolated European, living in the Mofussil, 'runs from having false cases trumped up against him. It is right that I 'should state publicly that this danger is a very real and very serious one, 'for probably no member of this Council has had the same experience as I 'have of the lives led by planters in the Mofussil. My own experience 'has given me a strong feeling on this matter, and any one who knows the 'extreme bitterness with which disputes about land are fought out in 'the Mofussil, and the unscrupulous methods to which recourse is had 'in conducting these disputes before the Court,—methods to which a planter 'cannot have recourse,—will understand how precarious his position may 'become, and how essential to him it is that the law should be well and 'wisely administered."

19. The Judges concur in the views here expressed; and they consider that the dangers thus described in the case of planters and manufacturers would be even greater in the case of persons in a humbler position in life, railway employes, artificers, and the like. These men are continually brought into contact with Natives in ways which may easily give rise to misunderstandings and ill-will. Should an accusation be brought against them, they labour under great disadvantages; they are often isolated from other Europeans; they generally have but an imperfect acquaintance with the vernacular languages; they are unable to retain the costly services of European advocates; and they might in some circumstances find it impossible to secure the assistance even of Native practitioners. It is easy to see how the grossest injustice might easily be inflicted in such cases by an officer who from any cause failed fully to realise the position of the accused. It is at any rate certain that Europeans of this class would feel an entire want of confidence in any but an European tribunal. On the whole, after making every allowance for temporary excitement and agitation, it is, the Judges think, impossible to doubt that European residents in the Mofussil do really consider themselves to be, and in fact are, in a position which justifies them in regarding the privilege of being tried by an European, on whose independence and impartiality they can fully rely, as one of very real importance to them.

20. Accordingly, as the number of Native officials who will be affected by

the proposed change is extremely small, as it seems probable that the majority of Native officials will for the future be statutory nominees, appointed in this country without any guarantee as to ability, and not, necessarily, possessing any acquaintance with the habits or feelings of Englishmen, as there is no evidence of any real demand for any such alteration, as the proposed change will disqualify a class of European officers who at present perform their duties to the entire satisfaction of the Government and the public; and as it cannot, it appears, be effected without a revival of animosities and class feelings, which are, on every account, to be deplored, the Judges consider that nothing short of grave and pressing reasons could justify its introduction.

21. But, so far as their own observations go, the Judges are unaware of the existence of any of the reasons on which a legislative change is usually demanded. In the exercise of their duties of superintendence and revision, they have occasion to watch attentively the working of the Criminal Courts, the returns of which are continually before them. Nothing in those returns indicates that there is at present any administrative inconvenience, any miscarriage of justice, any hardship inflicted on prosecutors, witnesses, or accused, or any dissatisfaction felt with the provisions of the Code as to the jurisdiction of the Courts. Some provisions of the Code are, the Judges are aware, believed by some persons to operate severely, and any measure for the reform of these would deserve consideration. It might be well, for instance, to consider the possibility of extending to natives in the Mofussil, under certain conditions, the right, of the nature of a Habeas Corpus, now exclusively enjoyed by Europeans, of applying to the High Court in cases of unlawful detention. But as regards the powers conferred on the several classes of Courts and the rights enjoyed by European British subjects in criminal cases, the Judges are not aware that there is any feeling of grievance or, except amongst a few individuals, any wish for change. On the contrary, the Judges believe, that the privileges now enjoyed by Europeans are readily acquiesced in by the main body of Natives, who understand and sympathize with the natural desire of Europeans to be tried by their own countrymen, and who appreciate the evils to which any alteration of the existing law may probably conduce.

22. They are confirmed in this view by the fact that, though the Criminal Procedure Code was for several years under consideration, and was criticised minutely by every Local Government, and though a very large body of official opinion was collected from every rank in the service, no suggestion on the subject was made by any responsible authority till Sir A. Eden's communication of the 20th March 1882, enclosing Mr. Gupta's letter of 30th January 1882.

23. The Judges find that their views as to this part of the subject are endorsed by his Honour the Lieutenant-Governor, who, in his speech on 9th March, observed that "there were a great many facts which supported the contention that there is no administrative difficulty in connexion with the matter," and expressed his conviction that "this measure is unnecessary in the present condition and constitution of the Native Judicial Covenanted Service in Bengal."

24. On these grounds the Judges are of opinion that there is nothing in the present condition or prospects of the Service which renders a change of the law expedient; nor do they think that any necessity is likely to arise within any period sufficiently near to require or justify legislation, especially when that legislation arouses apprehensions and animosities which are on every ground matter of regret.

25. In connexion with this part of the subject, it may be well to point out that the rapid development of railway and telegraphic communication, which has been urged by some of the supporters of the Bill as a reason for considering it to be free from danger, goes far, and will year by year go farther, to meet the argument based on administrative necessity. There are few parts of India and there will soon, it is to be hoped, be none in which an European cannot be forwarded to any place in which it may be desired to try him, with ease, speed, and economy. Europeans in India are, for the most part, at the present day, for all practical purposes, far nearer to the tribunals, to which they are subject, than they have ever been before; and

their transmission from one place to another will, year by year, become a matter of less difficulty.

26. The foregoing considerations, in the Judges' opinion, sufficiently dispose of the question of the expediency of introducing the measure at the present time. But some of the grounds on which the defence of the proposed change in the law was rested by the supporters of the Bill, seem to the Judges to call for observation. In the first place as to the reasons adduced for the change. "The only object we have in view," it was observed by the Honourable Member who moved the introduction of the Bill, "is to provide for the impartial and effectual administration of justice. It is by this test that we desire our proposals to be tried." Tried by that test the proposal seems to the Judges indefensible, for no one has suggested that the present administration of justice is not effectual and impartial, or that it will become in any degree more impartial or more effectual by the proposed alteration. On the contrary, the proposal is that a class of cases, which are admitted to be of so "exceptionally troublesome and difficult a character" as to justify their exclusion from the cognizance of any but specially qualified tribunals, shall be no longer confined to a class of officials who, in their disposal, at present give entire satisfaction and command entire confidence, but shall become cognizable by officials who, speaking generally, offer a less complete guarantee for impartiality and independence, who necessarily labour under the disadvantages arising from difference of nationality and social habits, and in whom the portion of the community concerned confessedly places less confidence than in the existing tribunals. If, as the Honourable Member says, the trial of Europeans is "apt to put an exceptionally severe strain on the judicial qualities of tact, judgment, patience, and impartiality," it is difficult to understand how the interests of justice can be promoted by committing these cases to officials who are regarded and, the Judges consider, rightly regarded, as less qualified to deal with them than those who at present are empowered to do so. Under the proposed law any Native Assistant Commissioner, who has served long enough to become a first class magistrate, might, in Assam or in any other Non-Regulation Province, be empowered to commit or try Europeans. Europeans may not unreasonably regard such an arrangement as providing less satisfactorily than the existing law for the impartial and effectual administration of justice in their own case. It is no disparagement of the integrity or ability of a Native Judge to say that he is necessarily more amenable to the external influences to which popular feeling, local prejudice or the wishes and interests of powerful individuals may give rise, than is an European officer, to whom such matters are for the most part unknown. It would be easy to conceive cases in which it would require no ordinary fortitude and independence on the part of a Native official to run counter to the prevailing sentiments of the society in which he lives. It not unfrequently happens that our superior officials are asked to transfer an important case from some Native Judge or Magistrate, not because from deficiency of experience or judicial knowledge he is unable to try it, but because one side or other apprehends (and sometimes even both sides unite in this respect) that some unknown or improper influence will be brought to bear on that officer.

27. In this respect it is necessary to point out that the present measure differs fundamentally from those by which in years past Europeans have been brought gradually within the jurisdiction of the Civil and Criminal Courts. On each of those occasions the reform had this strong justification, that it was really demanded in the interest of an impartial and effectual administration of the law. Justice could not, it is obvious, be done between Europeans and others either in civil or criminal cases so long as an European could be brought before no tribunal nearer than the Presidency town. Such a state of the law was in many cases tantamount to a denial of justice, and in criminal matters it practically, in all but very serious cases, secured impunity to the favoured class. On these grounds the changes, heretofore made, were justifiable and wise. But on the present occasion it cannot be suggested that the change will make the trial or punishment of European criminals in any one respect easier, speedier, cheaper, or more certain.

28. One of the grounds most frequently alleged in support of the Bill was

that the present state of the law was anomalous, and that this anomaly justified legislation. As to this, it is, the Judges think, enough to point out that the entire structure of Indian society and the British administration rests on personal laws, under which particular classes or individuals enjoy special rights apart from the general law applicable to the entire community. These rights have been solemnly guaranteed to the inhabitants of the country and are conscientiously respected by the Legislature and the Courts. The principle laid down in the preamble of 21 Geo. 3. c. 70, that it was "expedient that the inhabitants should be maintained and protected in the enjoyment of all their antient laws, usages, rights, and privileges," has been consistently maintained; and the Act which at present regulates the Civil Courts in Bengal (Act VI. of 1871) expressly provides that, in all questions regarding succession, inheritance, marriage or caste, or religious usage or institution, the personal law of Hindus and Muhammadans shall be the rule of decision. These personal rights are observed, so far as the Judges are aware, with equal care, and with ready acquiescence, by the people in their dealings with one another. They are insisted on by the class concerned whenever they appear to be endangered. Only a year ago the entire Hindu and Muhammadan communities were exempted from some of the most important provisions of the "Transfer of Property Act" out of respect to the wishes of certain native gentlemen who were apprehensive that the proposed enactment might be regarded as discountenancing their view of the Hindu law. Such being the universal rule, the English in India may, the Judges think, with some reason demand that a like regard may be paid to their personal rights, for which they have at any rate the prescription of long usage, which they highly prize, and which are not shown to conflict in any way with the rights of any class. The question asked in the course of discussion on the Code of 1872, when the law was placed on its present footing, seems to the Judges extremely pertinent—"Are English people to be told that, while it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? That, while the English Courts are to respect and even enforce a variety of laws, which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance?"

29. Another ground urged in support of the proposed change in the law is the invidious character of the existing distinction. If by "invidious" is meant that the law, as it stands, unfairly benefits Europeans to the detriment of natives, or that the privilege now enjoyed by Europeans can justly be regarded as offensive to native feeling, the Judges are unable to see any foundation for such a charge. It is not suggested that the rights now enjoyed by Europeans should be extended to the entire community, or that the proposed change would improve in any particular the general administration of the law. If by the abolition of the present rights of Europeans the Natives would be benefited, the balance of advantages might have to be struck; but this is not the case. No practical advantage for Natives is to be gained.

30. If even, apart from considerations of practical benefit, there were reason to think that the present state of the law was, or could reasonably be, regarded by Natives as humiliating or insulting to them or their countrymen, the Judges would consider that the possibility of remedying such a state of things deserved serious attention. But they cannot believe that such is the case. There is nothing in the existing law which implies any personal disparagement to any one. There may be in the ranks of the Native service officials who resent the existing law because it impliedly recognises the existence of a difference between Europeans and Natives, and because they regard such a recognition as obsolete, injurious, and oppressive. The Judges cannot regard such feelings as deserving of sympathy or consideration. Those differences, as a fact, exist, and any attempt to ignore them would, the Judges believe, be unwise and disastrous. So far as the present measure encourages the belief in any class of the community that such differences have ceased to exist, that Hindus and Englishmen can live side by side, not only with just and equal laws, but with absolute identity of status in every particular, it must, the Judges consider, be regarded as a probable source of

future difficulty. No reasonable official need feel aggrieved or humiliated because the law lays down a general rule that a class of especially difficult cases shall be tried by the officials who are confessedly most competent to try them, to whom their trial has hitherto been invariably confined, and to whom the class concerned earnestly desires that they should continue to be restricted. As was observed in the debate of 1872, "The privilege as to jurisdiction is the privilege of the prisoner, not the privilege of the Judge. The European has an objection to be tried by a native. Considering the position in which he stands, the question is whether you will put him in a position in which he does not at present stand. You place no slight upon a Native by saying that he can only try a man of his own race. What is there against the feelings of the Native in that? Why should anyone feel a slight because he is told that a particular man is to be tried in a particular way. On the other hand, it is a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen." This feeling, as a fact, is recognised by the provisions of the Code which allow Europeans and Natives alike to claim that at least half of the jury, by which they are to be tried, shall consist of persons of their own race.

31. Much reliance has been placed on the argument that for many years past Native Magistrates have in the Presidency towns exercised jurisdiction over European British subjects without giving rise to complaint. As to this, it is, the Judges think, enough to say that the position of the Presidency Magistrates, from the close proximity of the High Courts, the facilities thus afforded for supervision and control, the presence of a large and influential Bar, the activity of the local press, and the influence of public opinion renders it safe to entrust these officials with far more extensive powers than could be safely conceded in the case of Mofussil Magistrates. This view has

been adopted by the legislature which empowers* a Presidency Magistrate to pass a sentence of imprisonment for six months or fine of Rs. 200 without any appeal, whereas in the mofussil first class Magistrates and Sessions Judges are unable to pass a higher sentence than one month or Rs. 50 fine without appeal; and in the case of European British subjects no order passed by either is unappealable. For these reasons the Judges cannot consider the experience of the Presidency Magistrates' Courts as in any degree justifying the investment of Native officers in the mofussil with jurisdiction over Europeans.

32. Lastly, the Judges have to consider the question of the finality of the Bill. They are, of course, perfectly satisfied that any assurances which may be given by the present Government or any members of it in that respect will be fully and faithfully adhered to. But such assurances would not be binding upon any future Government, and still less upon the Native community. There would seem to be no elements of finality, either in the Bill itself or in its subject matter. There is no reason why those, in deference to whose wishes the Bill has been introduced, should accept it otherwise than as a prelude to still larger concessions; and it may probably be more difficult in the future for Europeans to protect their rights, when the principle, upon which those rights depend, has once been invaded.

33. The Judges have endeavoured in the preceding remarks to explain why they consider the grounds for the introduction of the Bill to be insufficient. They believe that they have shown that it is justified by no necessity, either immediately present or sufficiently near at hand to require consideration; that the Native civilians who enter the service by competition are a small and dwindling class; that nothing is as yet, or can be for many years, known of the officers appointed under 33 Vict. c. 3, except that they have not had the residence in England which is supposed by some to render the covenanted civilians competent to exercise the proposed jurisdiction; that the circumstances of mofussil life render the present privileges of Europeans in the criminal courts not a mere sentimental gratification, but an important safeguard against a real danger; that the measure cannot be defended as contributing to the more effectual and impartial administration of justice, an object which the present law sufficiently attains, and which it is not pretended that the amended law would attain any better; that in this respect the present Bill differs from former measures of a like nature, which had for their object the removal of an acknowledged grievance; that the anomaly

involved in the present state of the law is merely one instance of a state of things on which the entire structure of Indian society depends; that the right, which the proposed legislation will take away, ought not to be, and in fact is not generally regarded as invidious or oppressive; and finally, that the Bill does not possess the elements of finality claimed for it, but on the contrary must, whatever be the wishes of the Government, be hereafter made the standing ground from which further innovations will be demanded. On these grounds the Judges feel bound to express their strong disapproval of the Bill.

34. I am directed to state that the Hon. Mr. Justice Mitter will record his opinions on the subject of the Bill in a separate minute.

I have, &c.

(Signed) C. A. WILKINS,
Offg. Registrar.

No. 14.

LETTER from the OFFICIATING REGISTRAR, High Court, Calcutta, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 910, dated 1st June 1883).

In continuation of the High Court's letter No. 866* of the 23rd ultimo, communicating, for the information of his Excellency the Governor-General in Council, the views of the Court on the Bill to amend the Code of Criminal Procedure, Act X. of 1882, I am directed to forward, for the consideration of his Excellency in Council, the accompanying printed copy of a minute, dated 25th ultimo, recorded by the Hon. Mr. Justice Mitter on the same subject.

(Signed) C. A. WILKINS.

MINUTE by the Hon. Mr. Justice MITTER upon the CRIMINAL PROCEDURE AMENDMENT BILL.

We have been asked to give our opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects. I think that, in submitting our opinion, it is not our province, as judicial officers, to discuss the principle of the Bill so far as it involves the general policy of the State.

I shall, therefore, confine myself to the consideration of the two following questions:—

- (1.) To what extent the Bill in question proposes to take away from the European British subjects any right or privilege which they have hitherto enjoyed.
- (2.) What would be the result of the proposed change in the Criminal Procedure Code on the administration of justice in the country?

With reference to the first question, it has been said that, as various sections of the community in India are allowed to enjoy their personal laws on various matters, the European British subjects should not be deprived of the privilege of being tried by a Judge who is himself a European British subject, a privilege hitherto secured to them by the personal laws which they have been allowed to retain in this country. So far as the criminal laws of the country are concerned, I am not aware of any distinction in their application to the people of the various races inhabiting British India. Whether a criminal be a Hindu, a Mahomedan, a Buddhist, a Shikh, or a Parsee, he is subject to the jurisdiction of the same tribunal and is amenable to the same criminal laws.

But, apart from this, it seems to me that there is hardly any foundation for the statement that the personal laws, which a European British subject has been allowed to retain in this country, confer upon him the privilege

of being tried only by a Judge who is himself a European British subject.

A Native subject of British India would not be considered an alien in Great Britain. Subject to certain qualifications, which have nothing to do with the country of his birth, he would be, I imagine, eligible there to be appointed a Justice of the Peace or a Judge of the High Court of Judicature. He would be eligible to serve as a juror in a criminal trial, whatever might be the nationality of the accused person. If what I have stated above be in accordance with the provisions of the English law, then there is no foundation for the contention that the personal laws, which a European British subject has been allowed to retain in this country, confer upon him the right or privilege of being tried by a Judge who is also a European British subject.

Then it may be said that, whether a European British subject enjoys that right in England or not, he has enjoyed that right in India since the commencement of the British rule. It seems to me that this proposition is equally untenable. It is true that European British subjects, at the commencement of the British rule in India, were conceded the right of carrying with them the laws governing them in England both in civil and criminal matters. In both these matters the provisions of the English law were administered in cases in which they were concerned.

In the Presidency of Bengal a Supreme Court of Judicature was established at Fort William in Bengal under 13 Geo. 3. c. 63, the 14th section of which provided that the jurisdiction of that Court should extend "to all British subjects" who were residents of any part of Bengal, Behar, and Orissa then under the protection of the East India Company. By section 38 of this Statute, "the Governor General and Council and the Judges of the Supreme Court" were vested with the powers of Justices of the Peace within the settlement of Fort William.

By section 29 of 26 Geo. 3. c. 57, European British subjects were declared amenable "to the Courts of Oyer and Terminer and Gaol Delivery and Courts of General or Quarter Sessions of the Peace in any of the British settlements in India" for offences committed in India and other places mentioned therein.

By section 151 of 33 Geo. 3. c. 52, power was given to the Governor General in Council to appoint any "covenanted servant" of the East India Company, or any "other British inhabitant," to act as a Justice of the Peace in any place in British India.

By section 19 of Regulation IX. of 1793 and section 2 of Regulation II. of 1796, it was declared that European British subjects were amenable only to the Supreme Court of Judicature at Calcutta, for offences committed in the interior of the country. Provisions were made in the latter Regulation and Regulation XV. of 1806 for the commitment of such offenders to the Supreme Court at Calcutta.

By section 105 of 53 Geo. 3. c. 155, a Magistrate of a district was empowered to take cognizance of certain defined petty offences committed by a European British subject against any "Native of India."

By section 1 of Act IV. of 1843, provisions were made for appeals against the convictions of European British subjects by Magistrates and Justices of the Peace. This Act shows that a Magistrate of a district, although not a Justice of the Peace, was competent to take cognizance of complaints relating to offences mentioned in section 105 of 53 Geo. 3. c. 155, committed by a European British subject.

The next legislation in India on this subject was Act No. VII. of 1853. By section 1 the provisions of section 105 of 53 Geo. 3. c. 155, and of Act IV. of 1843, were extended to offences mentioned in it, committed "against the person or property of any person whatever." Under section 105, referred to above, it was restricted to such offences committed against a *Native of India*.

Section 2 of this Act says: "The powers in such cases," i.e., cases coming within the purview of section 105 of 53 Geo. 3. c. 155, "given to the "Magistrate of the Zillah or District may be lawfully exercised by any "Joint Magistrate, or other person lawfully exercising the powers of a "Magistrate, in the case of any such offence as aforesaid, which may

“ hereafter be committed within the district over which his authority extends.”

Under section 3 of Act XV. of 1843, a person, other than a European British subject, was eligible to be appointed a Deputy Magistrate exercising the full powers of a Magistrate. Under Act VII. of 1853, therefore, a Deputy Magistrate, who was not a European British subject and who had not been appointed a Justice of the Peace, could, if vested with the full powers of a Magistrate, take cognizance of cases mentioned in section 105 of 53 Geo. 3. c. 155. But the law on this subject was again altered by section 42 of Act XXV. of 1861, which contained the proviso to the effect that the jurisdiction given by the aforesaid Statute and Act VII. of 1853 should be exercised only by a Justice of the Peace.

The next legislation on the subject in question is Act II. of 1869, by section 3 of which the Governor-General of India in Council and the Local Governments were empowered to appoint Justices of the Peace “from the Covenanted Civil Servants of the Crown in India, or other British Inhabitants.” At that time, *viz.*, 1869, a native of this country was a member of the Covenanted Civil Service. This Act was followed by Act XXII. of 1870, which confirmed certain laws affecting European British subjects, passed by the Governors of the Presidencies of Fort St. George and Bombay, and the Lieutenant-Governor of Bengal in Council. These laws were further confirmed by 34 and 35 Vict. c. XXXIV., the second section of which provides that a Magistrate, who is a Justice of the Peace, is competent to commit a European British subject to the Court of Sessions or to the High Court, if he be authorised on that behalf by an Act of the Indian Legislature.

It will be convenient here to notice briefly the Jury Rules which obtained in the Supreme Court at Calcutta. Under 13 Geo. 3. c. 63, section 34, it was provided that in the Supreme Court at Calcutta “all offences and misdemeanours,” *whether committed by a European British subject or not*, “should be tried by a Jury of British subjects resident in the town of Calcutta, and not otherwise.” But by 7 Geo. 4. c. 37, it was declared “that all good and sufficient persons resident within the limits of the several towns of Calcutta, Madras, and Bombay” should be deemed qualified as jurors. There was this further provision in this Statute, that the Grand Juries in all cases and all the juries for the trial of persons professing the Christian religion should consist wholly of persons professing the Christian religion. But this latter restriction was abolished by 2 & 3 Will. 4. c. 117, section 2. By this last-mentioned Statute also, the Governor-General in Council was authorised to appoint *any person* resident within the territories in the possession and under the Government of the East India Company, and not being a subject of any foreign State, to act as a Justice of the Peace within the towns of Calcutta, Madras, and Bombay.

The above is a brief summary up to the year 1872 of the history of the laws relating to the exercise of jurisdiction in criminal matters over European British subjects residing in India. Now it seems to me that they do not establish the existence of the privilege which has been claimed for them. There was no disability arising from nationality to a British Indian subject to fill the office of a Judge of the Supreme Court at Calcutta; and although by section 87, 3 & 4 Will. 4. c. 85, it was declared that no Native of British India should, by reason of his religion, place of birth, &c., be disabled to hold any office under the East India Company, I have not been able to find any previous Statute by which such disability had been declared or created. At any rate, it is beyond all dispute that, since the passing of the aforesaid Statute, a Native of British India was not under any disability to enter the Covenanted Civil Service of the East India Company, and, as a member of the Covenanted Civil Service, he was eligible to be appointed a Justice of the Peace. It is true that unless he was a Covenanted Civil Servant, he could not act as a Justice of the Peace out of the limits of Calcutta, Madras, and Bombay. But his eligibility to be appointed a Justice of the Peace was declared in the year 1832, and the experience of the last 50 years, I believe, would warrant the proposed removal of this restriction as to the local jurisdiction.

In criminal trials in the Supreme Court at Calcutta all British Indian subjects residing within Calcutta were, as shown above, competent to act as Jurors whatever might be the nationality of the accused person.

From 1853 to 1861 a Native Deputy Magistrate, vested with the full powers of a Magistrate, could take cognizance of complaints against a European British subject for offences mentioned in section 105 of 53 Geo. 3. c. 155. From 1861 to 1872, a Native member of the Covenanted Civil Service, if vested with the powers of a Justice of the Peace and exercising the full powers of a Magistrate, could also deal with these cases.

Therefore it is clear that, since the commencement of the British Rule in India, a European British subject has not enjoyed *the privilege* of being tried by a Judge who is also a British subject.

This privilege or the right was for the first time conferred upon him under Act X. of 1872, so far as the Criminal Courts in the interior of the country are concerned.

With reference to the second question stated above, it seems to me that the apprehensions entertained by those who oppose the proposed Bill are not founded on any tangible basis. They do not appeal or refer to any known fact or condition of things reasonably justifying their apprehension.

On the other hand, if the facts gathered from past experience be made the basis of our conclusion,—as legitimately they should be—it would at once appear that there exists no reasonable ground for the supposed apprehension.

The facts to which I refer here are—

- (1.) That the jurisdiction has been exercised by Native Judges from 1836 in civil cases in which European British subjects are concerned, without any complaint from them.
- (2.) That the jurisdiction in criminal cases against European British subjects has been exercised by Native Judges in the Presidency Towns for many years past, without any defect in the administration of justice.
- (3.) That the administration of justice by European Judges in criminal cases in which natives are concerned has been regarded by the people as wholly satisfactory.
- (4.) That the administration of justice by a Judge of one nationality or creed in a case in which one or both litigants happen to be of another nationality or creed has not been found to be productive of failure of justice.

I shall notice next some of the arguments which have been advanced against the force of these facts. It has been said that civil suits differ in many essential respects from criminal cases. The result of an erroneous decision in the former affects generally the property of the unsuccessful litigant, while the result of a similar error in the latter affects the personal liberty and the reputation of the unfortunate accused person.

No one can for a moment deny the existence of this distinction. But it does not in the least affect the force of the argument under consideration. That argument is that a Judge, who is proved to have successfully grappled with questions of law and fact in a given civil suit, may be fairly presumed to be competent to show the same result in a criminal case also. The difference in the result of an error of decision in the two cases does not at all touch the force of this reasoning. Its force rests upon the ground that the facts to be investigated and the laws to be discussed are not of a different class, whether they arise in the decision of a civil suit or a criminal proceeding. The respective consequences of an erroneous decision have no sort of connexion with this proposition.

The usual answer given to the argument drawn from the past administration of criminal justice by Native Magistrates in the Presidency towns is, that there is a vast difference between the conditions of things existing there and those existing in the interior of the country. In the Presidency towns, it is said, an accused person has the protection of a vigilant Press, a strong public opinion, and an easily available legal assistance, while such advantages do not exist in any appreciable degree in the mofussil. It is also said that the concoction of false cases is almost unknown in the Presidency towns, while in the interior of the country, trumping up of false charges is one of the

commonest means of wreaking one's vengeance upon his enemy for a real or a supposed wrong.

It is certainly questionable whether, in the present state of things, it is correct to say that the advantages of a vigilant Press, a strong public opinion, and an efficient and easily available legal assistance are not enjoyed in an appreciable degree by the residents in the *mofussil*. But I shall not dilate upon this matter. I shall take it for granted that in these respects a Presidency town differs from a *mofussil* station. Assuming that this difference exists between the two places, let us see what the argument really amounts to. Does it not amount to this—that in the Presidency towns, being under the salutary check of the forces mentioned above, a Native Judge dare not go wrong wilfully? This argument therefore casts an unjust aspersion on the character of the Native Judiciary—an aspersion which, if put to the test of actual facts, can be proved to be utterly groundless. In civil cases, in which European British subjects have been concerned, if the Native Judges have proved themselves to be fair, honest, efficient, and careful officers, is it not unjust to presume that in criminal cases they would prove themselves to be just the reverse? The argument drawn from the absence of a vigilant Press, &c., is, I presume, equally applicable to civil as well as to criminal cases.

I shall next notice the other alleged difference in the conditions of things between the Presidency towns and the interior of the country, *viz.*, the prevalence in the one, and the absence from the other, of the concoction of false cases against innocent persons. I shall assume, in this instance also, the existence of the difference. I suppose that those who advance this argument mean to say (although I have not seen it stated in so many words) that these cases are generally supported by perjured *native* witnesses. It would be no disparagement to the European Judges in this country (for whose ability I have the highest respect) to say that an honest Native Judge, by his superior knowledge of the character of the people, will be better fitted than his European colleagues to unravel the mazes of concoction, and discover where the truth lies.

Then it has been said that the habits, manners, and customs of the natives of this country are, in all respects, essentially different from those of Europeans. It cannot be expected, from Native Judges, therefore, that, in cases in which European British subjects would be concerned, they would be able to form a correct opinion as to the real motives of an action of the accused person, if the motive of such action be a relevant matter for inquiry.

To this argument all the four facts set forth above afford a complete answer. I shall not further refer to Nos. 1 and 2, as their bearing has been sufficiently explained. But Nos. 3 and 4 contain, I believe, a more forcible refutation of this argument.

It may be safely asserted, without fear of contradiction, that the knowledge of European Judges of the habits, customs, and manners of the natives of this country is not in any degree superior to that of Native Judges, with fair English education, regarding European habits, customs, and manners.

The administration of criminal justice in the most important cases is now in the hands of European Judges. If the European Judges have been found to be successful in the administration of justice in the cases in which natives are concerned, there is every reason to hope that those Native Judges who would be entrusted with jurisdiction over European British subjects would acquit themselves with equal credit. I do not mean to say that the existence of a defect in the present system of administration of justice can justify the introduction of another defect of a similar nature. But what I mean to say is that there is no ground for complaint against the present system, and it is, therefore, reasonable to hope that there would be no ground of complaint if the proposed change in the law be carried out.

Native Magistrates have hitherto exercised jurisdiction in criminal cases in which European British subjects are complainants. If they have given satisfaction in these cases, there is every reason to hope that there would be no failure of justice in cases in which European British subjects would be accused with the commission of an offence.

Of the European and Eurasian population in the interior of the country, I believe the descendants of the Europeans, who do not come within the definition of European British subjects given in the Criminal Procedure Code,

form by no means an inconsiderable proportion. These persons in criminal cases have been hitherto subject to the jurisdiction of ordinary tribunals. No complaint has been made of any failure of justice in the hands of Native Magistrates, in cases in which persons of this class have been tried for offences alleged to have been committed by them. Their habits, manners, and customs are, in all essential respects, similar to those of the Europeans. This fact furnishes the most cogent refutation of the argument under consideration.

In conclusion, I desire to make one observation as to the provisions of the Bill itself. Under section 22 of the Code as it stands now, any European British subject may be appointed a Justice of the Peace. Accordingly a European British subject, having the powers of a Magistrate of the first class, when appointed a Justice of the Peace, is competent to deal with cases in which European British subjects are accused with offences triable by a Magistrate. It is proposed to take away the power of the Government to appoint a judicial officer of this class to be a Justice of the Peace. The object stated for this proposed change is to remove judicial disqualification based merely on race distinctions. The same object may be gained without taking away this power, by extending the operation of section 1 of the Bill. But, if it be thought inexpedient to extend its operation, I would venture to say that the object stated does not, in my opinion, warrant the proposed change so far as this class of officers is concerned.

(Signed) ROMESH CHONDER MITTER.

The 25th May 1883.

No. 15.

LETTER from the OFFICIATING SECRETARY to GOVERNMENT, Bengal, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 567J.-D., dated 10th May 1883).

WITH reference to your letter No. 25 C., dated the 17th March last, I am

* No. 1518-19J., dated the 27th March 1883. directed to submit, for the information of the Government of India, a copy of the circular letter* issued from this office, calling for the opinions of the Legal Remembrancer, of the Commissioners of Divisions, and of selected officers, European and Native, on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, together with copies of the replies† which have up to the present been received to that circular.

† 1. Letter from the Superintendent and Remembrancer of Legal Affairs, No. 34, dated the 10th April 1883.

2. Note by J. Ware-Edgar, Esq., C.S.I., Officiating Commissioner, Presidency Division, dated 26th April 1883.

3. Letter from the Commissioner of the Rajshahi and Kuch Bihar Division, No. 135J.-A. dated 2nd May 1883.

4. Letter from the Commissioner of the Chutia Nagpur Division, No. 104J., dated the 2nd May 1883.

Mr. Rivers Thompson will reserve his own remarks upon the Bill until after the receipt of all the reports of the local officers.

3. I am to add that the Bill and the Statement of Objects and Reasons were published in the "*Uriya Gazette*" of the 22nd and 29th March last and the 5th ultimo, and in the "*Hindī Gazette*" of the 17th and 24th ultimo and the 1st instant. The dates of publication in the "*Bengali Gazette*" will be reported in due course.

(Signed) F. B. PEACOCK.

LETTER from the OFFICIATING SECRETARY to the GOVERNMENT of BENGAL, Judicial, Political and Appointment Departments, to all COMMISSIONERS of DIVISIONS, and to the SUPERINTENDENT and REMEMBRANCER of LEGAL AFFAIRS (Judicial No. 1518-19J, dated Calcutta, the 27th March 1883).

SIR,

I AM directed to forward herewith a copy of a Bill (with Statement of Objects and Reasons) to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and to request that you will be good enough (after consultation with selected officers, European and Native, in your division) to favour the Lieutenant-Governor with an expression of your opinion upon the principle of the Bill, and as to the question whether any administrative inconvenience at present arises, or is likely to arise in the future, from the exclusion of native covenanted civilians from the power of trying European British subjects on criminal charges.

2. Your reply to this letter should be despatched so as to reach this office at Darjeeling by the 15th May at the latest.

I have, &c.

(Signed) F. B. PEACOCK,
Officiating Secretary to the Government of Bengal.

Enclosures referred to in preceding letter.

LETTER No. 34 from the OFFICIATING SUPERINTENDENT and REMEMBRANCER of LEGAL AFFAIRS, to the SECRETARY to the GOVERNMENT of BENGAL, Judicial, Political, and Appointment Departments, dated Calcutta, the 10th April 1883.

IN reply to your No. 1519J of the 27th ultimo, I have the honour to say that, in my opinion, the proposed Amendment Bill is philosophically and logically vicious in principle, politically inexpedient, and practically impossible, should the Europeans refuse to acquiesce.

2. I apprehend that, after what has been said elsewhere, no lengthened arguments are expected in support of my opinion, and I will content myself with merely referring to the remarks of Mr. F. Stephen in 1872, and the speeches of Messrs. Thomas and Evans, with whose reasonings I entirely agree.

3. If the Bill were passed to-morrow, there are many ways by which Europeans in the mofussil could frustrate and render impossible the exercise of the jurisdiction, and I quite anticipate that any district in which such a jurisdiction were forcibly introduced, would very soon be thrown into disorder and confusion, while the Baboo Civilian might be artfully driven into such blunders and misconduct as would necessarily involve his official disgrace. The elements of disorder exist in every district; they are not dead, but sleeping. A very little stimulus and organisation would let them loose with formidable force.

4. It has been taken for granted all through that the administration of justice by Native Magistrates in Calcutta is satisfactory because, I suppose, complaints are not made against it. Now the absence of complaints is sufficiently explained by the class of Europeans who generally appear as defendants in these courts. Without having given any special attention to the subject, I have read from time to time the newspaper report of proceedings where cases of a more important character were under trial, and the opinion I entertain is that, should any competent person consistently and steadily watch these Police Courts of Calcutta, his conclusion would be that the administration of justice in them is very far from satisfactory, and that nothing but the obscurity and poverty of the vast majority of the defendants prevents a great deal more from being heard of their proceedings.

5. As to any administrative necessity for this amendment, I know of none such at present, and I see no prospect of any such in the near future. A District Magistrate is the one Magistrate in the district who does not need to be vested with special judicial powers, having practically ceased to be a

judicial officer. A reference to the High Court's Annual Report on Criminal Justice will show how District Magistrates have in late years withdrawn from the exercise of original judicial functions.

I have, &c.

(Signed) T. T. ALLEN,
Officiating Superintendent and
Remembrancer of Legal Affairs.

Note on the Criminal Procedure Code Amendment Bill of 1883.

ALTHOUGH the opinions of the officers consulted by me will not be received in time to enable me to submit, before being relieved, the divisional report on the subject called for by Government, I feel bound to put on record my views, because almost all my service, from my first appointment to Cachar in 1863 until I left Chumparun in 1882, was spent in tea and indigo-growing districts. I have had therefore perhaps unequalled opportunities of studying the conditions under which these industries are carried on, and have been forced to devote much thought to the very difficult questions connected with the administration of criminal justice in cases in which Europeans are concerned, and the best means of affording effectual protection to the natives of the country when their interests or rights get into conflict with those of members of the dominant race. Besides this, it appears to me that some most important points connected with the proposed measure have been overlooked, both by its opponents and its supporters, and that these points, if properly understood, would go far to account for the extraordinary outburst of indignation with which the Bill has been received, especially by Europeans living in the tea districts.

Chief among these matters are the real character and history of the compromise of 1872, and the radical and irreconcilable difference between the principle of the Bill as brought into Council, and all the proposals on the subject made since 1857, including that made last year by Sir Ashley Eden, on which the opinions of the Local Governments were obtained. The Hon. Mr. Evans, in his speech in Council of the 9th March, gave an account of what had happened previous to and in 1872, and it is not necessary for me to repeat what he has said. I shall merely, therefore, supply some omissions made by him.

In the first place he has not brought out, with sufficient clearness the facts that previous to 1872 there were really two distinct questions in dispute—the question of increasing the jurisdiction over European British subjects of those mofussil courts in which Europeans presided, and the question of giving jurisdiction to natives over European British subjects; and that the opposition to the former of these proposals was at least as great as that to the latter. In illustration of this I shall merely quote passages from a speech made by Sir Arthur Buller on the 7th March 1857, in which he acknowledged frankly that the privilege of British subjects to be tried before the Supreme Court could no longer be maintained, as its maintenance either entailed intolerable hardship upon honest men, or ensured impunity to crime. After this admission, he enumerated the courts to which it was then proposed to make European British subjects amenable. They were the Sessions court, the Magistrate's court, courts presided over by First Assistants to Magistrates and Principal Sudder Ameens, and courts presided over by Second Assistants to Magistrates and Moonsifs, and said: “It was against these tribunals that British subjects protested against all as incompetent, and against some as open to the evil influences of personal prejudice and antagonism of race.” Later on in the speech, after calling attention to the danger Europeans would run if liable to be tried by prejudiced Mahomedan, he took up the question of the European courts, and asked whether any of the Members of Council really thought that “the boys who acted as Assistant Magistrates, or that the Magistrates themselves, wholly untrained, as they were, to their profession, and wholly unaided either by a jury or by any competent bar, were fitting depositories of the vast powers proposed to be entrusted to them? He imputed to these gentlemen no fault save that of youth and inexperience. Fine, manly, intelligent young fellows, they were, all fully

“ his equals, he was free to admit—many greatly his superiors in natural abilities; but still the fact was undeniable: they were young and inexperienced, and youth and inexperience were not the best qualifications for the Bench.”

The mutiny prevented the further discussion of the Procedure Bill for some time, and when the matter was again taken up in 1859, the proposal to extend the jurisdiction of the mofussil courts does not seem to have been revived, but there was a very evident desire in the minds of some of the Members of Council to remove the disqualification under which natives laboured in dealing with cases in which European British subjects were concerned. In the course of the debates on this subject, Sir Barnes Peacock, then Chief Justice of Bengal and Vice-President of the Council, made the following statement:—“The Hon. Member for Bengal had referred to the section of the Charter Act which said that no native of India was disqualified, as such, from holding any place, office, or employment under Government. The present question related not to disqualification, but to qualification. A native was not disqualified from becoming a member of the Civil Service. He might go to England, pass his examination, and come out as a Civil Servant. He was not disqualified from becoming a Civil Servant, or, when a Civil Servant, from being appointed a Justice of the Peace; but he was not qualified to be a Justice of the Peace unless he was a Covenanted Civil Servant.” It is quite clear from this that the Chief Justice considered that, under the statute then in force, a Native Covenanted Civil Servant was qualified to be a Justice of the Peace, and this opinion was not controverted by Mr. Harrington or Sir Charles Jackson, who followed Sir Barnes Peacock in debate.

In 1861 the question of extending the jurisdiction of the mofussil courts was not raised, so far as I recollect; but there was a controversy, much of which is scarcely intelligible to me, about the powers of Native Magistrates in dealing with European British subjects charged with offences. The results were that it was provided in section 39 of Act XXV. of 1861 that no person who was not a Justice of the Peace should commit or hold to bail a European British subject, and that the jurisdiction given by Statute 53, George 3., clause 155, section 105, and Act VIII. of 1853, to Magistrates was restricted by section 42 to Justices of the Peace. Act II. of 1869 consolidated and amended the law relating to the appointment of Justices of the Peace. Section III. provided that the Governor-General in Council for the whole of British India, and local Governments for the territories under their jurisdiction (other than the Presidency towns), might appoint Covenanted Civil Servants of the Crown in India, or other British inhabitants, if properly qualified, to act as Justices of the Peace. This description was reproduced from the Statute. It did not, therefore, affect the qualifications of Native Covenanted Civilians to be made Justices of the Peace, and this, I well recollect, was fully understood by Europeans in the tea districts. In July 1870, Mr. Stephen introduced a Bill to amend the Criminal Procedure Code of 1861, and this was referred to a Select Committee on 17th December of the same year. This Bill, as committed, contained a proposal to allow Sessions Judges to dispose of charges against European British subjects, if they did not claim their right to be tried before one of the High Courts.

While it was being considered in Committee, two circumstances occurred which had important consequences: Messrs. Romesh Chunder Dutt, Behary Lall Gupta, and Surendra Nath Banerjea, the first Native Covenanted Civilians appointed to Bengal, having arrived in India in September 1871, Mr. Surendra Nath Banerjea was, very unfortunately as I have always thought, posted to Sylhet. I was at Shillong when this happened, and there met many planters from Assam. Subsequently I spent some time in the Sylhet district on my way to Cachar, and of course saw many planters in both districts. Their uneasiness and even alarm were very great. They expected that Mr. Surendra Nath Banerjea would in a short time be made a Justice of the Peace, and they looked with great dread at the prospect of his being able not only to fine them heavily but to commit them to the High Court. More than this, they assumed that there would be thenceforward a regular yearly influx of Native civilians, many of whom would necessarily be sent to the tea districts, and in the course of time be made Justices of the Peace; and they prophesied

that the consequence would be little short of ruin to the tea industry. Of course their forebodings were exaggerated, but I am bound to state that their fears of the result which might be expected to follow the employment of young and untrained natives as Assistant Commissioners in the tea districts were not groundless, and that the planters would not have been the only or the chief sufferers. The injury done to the natives of the tea districts, to the imported coolies in the gardens, and even to the Native officers themselves, would have been far greater. The other matter to which I have alluded was a statement made in Council by Mr. Stephen on the 16th December 1871, to the effect that the Committee had received a most important paper from the Government of Bengal, containing a suggestion that European British subjects should be made, to a great degree, amenable to the ordinary criminal courts of the country. Mr. Stephen added that the matter would be considered in Committee, but that, owing to its importance, he wished to have it made public as soon as possible.

The position, therefore, at the end of 1871 was this: Under the existing law, Native Covenanted Civilians were qualified to exercise some jurisdiction over European British subjects. There were then three such Civilians who might be expected to get these powers at any early date, and one of them was posted to a district where he would have jurisdiction over members of the most sensitive and jealous class of Europeans in the country. All people interested in tea feared this much more than they did a moderate extension of the jurisdiction of the courts presided over by Europeans, and they knew that they could not get the law changed without the assent of some at least of the members of Government. On the other hand, all concerned in the administration of the tea districts felt that the existing law restricting the jurisdiction of the mofussil courts was intolerable, that the evils acknowledged to exist in 1857 had increased ten-fold, and that a change was absolutely necessary for the sake of the natives of the country. It was widely felt that such a change was immeasurably more important than any further removal of the disqualifications of Native Magistrates, or even the maintenance of the statutory qualification of Native Covenanted Civilians. There was, however, a very influential minority, which though strongly opposed to any extension of the jurisdiction of any mofussil courts, did not share the alarm felt by the tea-planters at the prospect of Native Justices of the Peace exercising the restricted jurisdiction. Foremost among these was the Commander-in-Chief, Lord Napier of Magdala.

The result of all this was a compromise between the majority of the Select Committee and the non-official community, under which it was agreed that the non-official community should accept the extended jurisdiction of the mofussil courts, provided that none but a European British subject should have jurisdiction to inquire into a complaint or try a charge against a European British subject. This compromise was laid before Council by Mr. Stephen on the 30th January 1872, 19 days before the assassination of Lord Mayo. It is probable, therefore, that the latter knew of it. It was not discussed in Council until 4th May, when Mr. Stephen distinctly stated that there had been a compromise with the general European population; and it is perfectly clear from the whole course of the debate which followed, that the European community were held to have accepted the extended jurisdiction allowed to Justices of the Peace and Sessions Judges being European British subjects, on condition that Native Civilians, even when appointed to be Justices of the Peace under Act II. of 1869, should not have any criminal jurisdiction over European British subjects. The Commander-in-Chief subsequently moved an amendment, which he described as his protest against any extension of the powers of Magistrate for dealing with European British subjects. He was unsupported in this, and Mr. Stewart, the non-official Member of Council, stated that, in his opinion, they were practically bound by the recommendations of the Committee. I think it will be perfectly clear that the majority of the Legislative Council in 1872 did not merely give up a portion of a proposed law in order to facilitate the passing of the remainder, but practically repealed a part of an existing law, as the consideration for the acceptance by the European community of entirely new provisions was regarded by them with deep and traditional dislike, which was shared by one of the highest members of the Executive.

Government, who would have been prepared to lead the opposition to the proposed innovation.

Personally, I have always regretted the disqualification of Native Covenanted Civilians, for I believe that the concession was unnecessary. A pledge not to employ them in tea or indigo districts would have satisfied the non-official community, and would have simply been giving sanction to a rule which should always be observed for the sake of all parties, but which is essential for the protection of the ryots in indigo districts and the coolies in tea districts. Apart, however, from the mistake which I hold to have been made in conceding the restriction in Act II. of 1859, I can testify that no measure of the Government passed in my time has been more beneficent in its effects than the extension of the jurisdiction of the mofussil courts over European British subjects, and that its admirable results have been in a great measure due to its having been accepted loyally by the classes affected, instead of being forced on them without their consent. As regards the concession then made to them, I hold of course that it cannot preclude the present Government from removing the disqualification of Covenanted Civilians or other Natives, but I think that it made it the duty of the Government to do all in its power to obtain the consent of the European community to any changes in that direction before formally proposing them, and that great care should have been taken to make such proposed changes definite and clear, to leave no doubt as to their scope and ultimate effect, and to avoid unnecessarily wounding susceptibilities, or giving ground for fearing that the law could be made by the executive authorities to do more than was intended by the legislature.

Now, I think that the present Bill can be shown to be grievously faulty in every one of these respects. The principle of the existing law is that the European British subject is to be tried by another European British subject. But to this rule there are exceptions, viz., Native Presidency Magistrates and probably Native High Court Judges, and a Native Recorder of Rangoon, should one ever be appointed. Mr. Gupta, in his note of the 30th January 1882, proposed to add two more classes of exceptions, viz., Native District Magistrates and Native Sessions Judges, the general rule remaining unaltered. In like manner, Sir Ashley Eden, the Governments of Madras and Bombay, the Lieutenant-Governor of the North-West, the Chief Commissioners of the Central Provinces, British Burmah and Assam, and the Resident of Hyderabad, all proposed some sort of further exception to the existing rule, which all manifestly meant to retain. The Punjab Government was the only one which proposed to depart from the principle of the existing law. This principle has, however, been abandoned in the present Bill which proposes to substitute what may be called an official qualification for the race qualification. It would add all District Magistrates and Sessions Judges to the present list of *ex officio* Justices of the Peace, contained in section 25 of the Criminal Procedure Code, and would disqualify the class of European British subjects now eligible for appointment as nominated Justices, and substitute for this class the following four classes:—(1) Members of the Covenanted Civil Service; (2) Native Statutory Civil Servants; (3) Assistant Commissioners in Non-Regulation Provinces; and (4) Cantonment Magistrates. Now, in the first place, this new scheme disqualifies large classes of official and non-official Europeans, from whom the ranks of Justices of the Peace have hitherto been recruited. Taking the Bengal Civil List for the current quarter, I find two lists of Justices of the Peace for Bengal, Behar, and Orissa,—one containing those actually now resident in the mofussil, and the second containing those now in Calcutta or on furlough, or employed under other Governments. In the first list I find the names of 37 people who would not come under any of the classes in the proposed Bill. In the second list there are, I think, 64 such names, but I feel some doubt about one or two of these. The total number of Justices in the two lists is 333, out of whom about 100 belong to classes who would be disqualified by the Bill. Among these I find officers of the Army and Navy, Deputy Magistrates and other Uncovenanted servants of Government, tea and indigo planters, landowners, merchants, and lawyers. Of course the appointments of the present Justices are protected by section 7 of the Bill; but that is not material to the present argument, which is that if the Bill were to be passed, the Government would in the future be deprived of the services of

large classes which have been found useful in the past. I may add that the power of appointing such persons to be Justices of the Peace will become even more valuable as railways got made through remote jungly tracts, and ships began to frequent out-of-the-way ports. It will then be often most desirable, mainly in order to protect the natives, to be able to vest the Superintending Engineer engaged in constructing a line of railway, or the chief officer of a port, with the power of dealing with offences committed by Europeans. From a purely administrative point of view, therefore, the inconvenience caused by the disqualification of so many classes of Europeans would be very much greater than any that could arise from the disqualification of Native Civilians rising to be Sessions Judge or District Magistrate. It is manifest that, as a matter of administrative convenience, it is desirable to have as many Magistrates as possible qualified to deal summarily on the spot with petty offences of Europeans living in outlying districts. It is also manifest that the effect of this Bill will be, in the future, greatly to diminish the number of such Magistrates, and it is very remarkable that no local Government or local official appears either to have recommended or contemplated such a change. I am wholly unable to discover any practical reason for disqualifying whole classes of Europeans, and thus diminishing the facilities for the prompt disposal of petty cases. The number of Europeans that will be disqualified is very much greater than the number of Natives who will be even constructively qualified by the Bill, and it must be borne in mind that no complaint has been made against the fitness of those to be disqualified. If the substitution of an official qualification for the present qualification cannot be carried out without disqualifying in a wholesale way so many persons now qualified, and thus diminishing the facilities for dealing with charges against Europeans which it was the object of the compromise of 1872 to gain, the proposal is clearly a retrograde one as regards the efficient administration of justice.

If the classes declared to be qualified by the Bill are analysed, the objectionable character of its principle will be still clearer. I say nothing about Covenanted Civilians, but I feel bound to submit that the European community have good grounds for protesting against statutory civilians being at present declared qualified. The system introduced by Lord Lytton is still on its trial, and I am not prepared to declare it to be a failure, without further experience of it; but it is impossible to ignore the fact that it is emphatically condemned by many, among both Europeans and Natives, best qualified to judge, and I have not heard a word in its favour from any one whose opinion on the subject is worth having. But the most objectionable part of the Bill is that by which Assistant Commissioners in Non-Regulation Provinces are declared to be qualified. Covenanted Civilians and statutory civilians are both classes created and defined by law, and there can be no doubt as to what the terms connote, but Assistant Commissioner is a mere administrative expression, and the status and qualifications of the officers called by that name wholly depend upon executive authority. Yet of all the classes declared qualified in the new Bill, this is the one which touches the European British subject most nearly. It must be remembered that while there are only 71 regulation districts in the Bengal Presidency, including Burmah, there are about 105 non-regulation districts, and that tea is grown almost exclusively in these last. So far as I know, there is not a single tea garden in a regulation district except that of Chittagong. Assam is non-regulation; so are Chota Nagpore, Darjeeling, Julpigori, the Chittagong Hill Tracts, Kangra, Kurseong, and, I think, the Doon. Besides this, there can be no doubt that the future of European enterprise, agricultural and industrial, lies in the wild undeveloped countries which now form the bulk of the Non-Regulation Provinces. In considering the bearing of the proposed legislation on the position of non-official Europeans in those provinces, we must not lose sight of the fact that, while the classes from whom Magistrates of districts and Sessions Judges in Regulation Provinces can be chosen are strictly limited by Acts of the British Parliament, there is absolutely no statutory restriction on the discretion of the Executive Government to appoint any person it chooses to be Deputy Commissioners in the non-regulation districts. For instance, no one but a Covenanted Civilian can be appointed Magistrate of the 24-Pergunnahs, except in certain cases expressly provided by Acts of Parliament, while any one may be appointed

Deputy Commissioner of Cachar. Among the Deputy Commissioners and other officers who perform the duties of District Magistrates in the Non-Regulation Provinces, there are now about 50 Covenanted Civilians, the remainder being military officers or Uncovenanted Europeans. As shown above, there is nothing in the law to prevent Uncovenanted Natives being appointed to these offices, but the officers so appointed would certainly be of great distinction and high character. There is not the same security about the Assistant Commissioners, who are now (including Judicial Assistant Commissioners) about 123 in number, several of these being Natives, and of course it being possible that future vacancies may be largely filled up by Natives, for, as pointed out above, the Assistant Commissioner is purely the creation of executive authority, which has in many cases changed the very title of the office. For instance, when I was first appointed to the non-regulation districts, the title was Assistant Superintendent in Cachar. In 1864 it was changed to Assistant Commissioner by an executive order. Below the Assistant Commissioners, there are about 280 officers called Extra Assistant Commissioners. These are mostly Natives, and it is no injustice to them to say that in all the Non-Regulation Provinces known to me, they are below the standard of Deputy Collectors in regulation districts. If the present Bill were passed, there would be nothing in any law to prevent the Executive Government changing the designation of these officers to that of Assistant Commissioner, and thus making them qualified for appointment as Justices of the Peace. If it be said that this is a highly improbable contingency, I answer that the improbability does not affect my argument, which is that the term Assistant Commissioner has no legal connotation, and that it should not therefore be used to describe a class in a law where clearness and definiteness are essential.

I am compelled, on the grounds above stated, to record an emphatic condemnation of the principle of the Bill, as disqualifying large classes of men hitherto qualified, whose disqualification will cause distinct administrative inconvenience, as directly qualifying one class which has not yet shown any sign of fitness to exercise the powers to be entrusted to it, and another so-called class which has no defined legal existence, and as indirectly giving the Executive Government power to extend the qualification to a large and undefined body of officers, the greater number of whom are undoubtedly unfitted to be Justices of the Peace.

To the question whether I consider it advisable now to fall back on Sir Ashley Eden's alternative proposal, and give Native Covenanted Civilians who rise to be Magistrates or District Judges the same powers that Europeans have in the same capacities, I am obliged regretfully to answer that I do not. I have always been strongly in favour of the measure. The argument of administrative convenience has no doubt been made too much of, but there are other and, to my mind, stronger arguments derived from consideration of policy and equity, which there is no need to reproduce here. I believe and earnestly hope that before long it may be possible to remove the disqualifications created in 1872; but I see clearly that it ought not to be attempted at present. Apart from the fact that this limited measure will not affect that which Government has declared to be the great object of the present Bill—the removal *in toto* of the "race qualification of the Judge"—there are other reasons of overwhelming weight for the postponement of the measure. Angry passions have been aroused; a deep sense of injury has grown up, as, I think, not unnaturally, in the minds of the European non-official community; vague and wild suspicions have been formed of the ultimate intentions of the Government. Such conditions make calm consideration of, or assent to, a measure like this impossible; and the evils of forcing it on the community affected by it are so great and so alarming that the Government would not be justified in incurring them. I do not desire to go into the details of the evils, which will readily present themselves to the minds of officers who have had district experience; but I would add that, under such adverse circumstances, the gift of these new powers would be eminently disastrous to the recipients, and greatly increase their difficulties in discharging satisfactorily the very arduous and responsible duties of the posts to which they are about to be promoted.

(Signed) J. WARE-EDGAR.

The 26th April 1883.

LETTER, No. 135Jct., from LORD H. ULICK BROWNE, Commissioner of the Rajshahye and Cooch Behar Division, to the SECRETARY to the GOVERNMENT of BENGAL, Judicial Department (dated Darjeeling, the 2nd May 1883).

IN reply to Government Letter No. 1518J, dated 27th March 1883, with enclosures, I have the honour to report on the Bill to amend the Code of Criminal Procedure, Act X. of 1882:

I have consulted six selected officers in this Division, of whom four are European district officers and two are Natives; one of the latter is an experienced Native Deputy Magistrate, and the other the ablest of that class serving in the Division.

2. None of the officers consulted have ever known any inconvenience to arise from the exclusion of Native Covenanted Civilians from the power of trying European British subjects on criminal charges. In my own experience, Mr. Dutt was for a short time in charge of a subdivision in which two or three Europeans resided, and Mr. B. L. Gupta acted as Magistrate of Rungpore, in which there are a number of Europeans of different classes stationed at Saidpore; and in neither instance was there any such inconvenience.

3. Indeed, when the circumstances anterior to, and connected with, the introduction of the Bill are considered, it seems scarcely possible that any real inconvenience can have been felt. The Code of Criminal Procedure was amended in March 1882 by the passing of Act X. of that year, and the amending Bill was under consideration and discussion for a long time previously. Though divisional and district officers were invited to make suggestions, and though it was open to the public to do so, I believe no district or divisional officer, and no non-official, ever suggested the present measure; while it is certain that it, or something like it, would have been suggested if any inconvenience had been actually experienced. I think only one person in the whole country made any suggestion in the direction of the Bill, and he was a Native officer serving in Calcutta. If this impression is correct, it seems to indicate, without need of corroboration, that the measure is uncalled for; but there is something more to be said in support of that view. There can be no want of officers who exercise the power of trying European British subjects, as the Bill proposes to prevent all European Deputy Magistrates appointed hereafter from exercising those powers; there are few criminal cases in which Europeans are the accused; and lastly, the Bill originated in the personal representation of a Native Civilian, submitted in the interests of his own dignity and that of a few other Native Civilians, and nothing more.

I think it can scarcely be denied, if the denial is to be supported by facts, that, speaking generally, there has been no administrative inconvenience, and that if such has ever been experienced, it can only have been in a very few isolated cases.

4. As regards inconvenience in the future for want of the provisions of the present Bill, the officers consulted think there is no reason to apprehend any worth thinking of, though Colonel Morton remarks that if Government chose to appoint a Native to Julpigoree, then, on the complaint of a cooly that a tea-planter had boxed his ears, inconvenience would result if there was no qualified European magisterial officer at the station. Mr. Wace very naturally cannot conceive that, under the circumstances of Darjeeling, any but an European will ever be appointed to the charge of that district, whether the Bill becomes law or not, and the same may be said of Julpigoree. In the legislative debate of March last, his Excellency the Viceroy contemplated as many as one sixth of the total number of Covenanted Civilians being Natives in the course of time. Judging from the experience of the past as to the number of Natives who enter the Civil Service by competition, that time must, under the operation of the present combined system of competition and nomination, be somewhat far off, as it is not to be supposed that Government, on seeing that Natives are unsuccessful in the competition, will appoint a large number of them in this country, and thus take a decided step towards displacing the competitive system and returning to one of simple nomination. So, even if there were no strong objections to the Bill, it does not seem advisable to legislate for a somewhat distant future in a matter

which contains elements of uncertainty. It may be, and it seems to me very probable, that long before we reach the time when one sixth of the Covenanted Civilians are Natives, Government will find out that the present system of nominating Natives, under which alone is there any chance of that result, does not answer; and new as the system is, it would be an unsound basis on which to legislate for a future time. Even if, however, the nomination system is found to answer, and the proportion of one sixth of Natives is attained, it is not, after all, a large proportion, and so few cases would have to be transferred from one district to another for want of powers to try Europeans, that I should not expect any inconvenience worthy of consideration for want of the provisions of the Bill: certainly none that would (not outweigh, but) nearly equal the disadvantages of applying them.

5. Turning to the principle of the Bill, I find in the statement of objects and reasons, signed by Mr. Ilbert, the following passages:—

“The Government of India has accordingly decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race distinctions.

“With this object the present Bill has been prepared.”

The Bill does not propose to abolish the special jurisdiction of the High Court, of Sessions Judges, and of Magistrates exercising first class powers over Europeans, or to alter the limited powers of sentencing them now exercised by Sessions Judges and by Magistrates with first class powers. There is thus, it seems to me, but little principle in the Bill, which is only a measure for modifying the exceptional privileges of Europeans on a single point, and is therefore proposed in the hope of securing an advantage which, even from the view of the supporters of the Bill, can only be a very slight one, while the disadvantages of the measure from the opposite point of view are enormous.

Mr. Wace observes as follows on the limited principle of the Bill:—

“If it could be pretended that on the passing of this law all distinctions between the two races would disappear from our legal procedure, one might be disposed to run some risk to secure such an end. This proposed change, however, touches but one point of distinction. The Government declares its intention of maintaining other privileges of the European, the *habeas corpus*, the limitation of powers of Magistrates and Sessions Judges over European British subjects. Its maintenance of these privileges is an admission of the strongest argument against this Bill. The other privilege, which it is now proposed to withdraw, rests on the same principle. Disavow the principle in respect of one, and you must disavow it as regards others, so far as logic and theory are concerned.”

6. The next point for consideration is how far the very limited principle of the Bill really applies to the case to meet which it is directed. His Excellency the Governor-General, in his speech in the Legislative Council, based the principle on the Queen's proclamation of 1858, announcing that, *as far as may be*, Her Majesty's subjects, of whatever race or creed, be impartially admitted to offices in the public service, the duties of which they may be *qualified by their education, ability, and integrity, duly to discharge*. There is first a reservation, which it may fairly be presumed was made to meet special circumstances, which it cannot be denied are found in the present case; and then, before the concession is to be applied, the subjects of it must be qualified to duly discharge the duties of the office to which they aspire. Here there arises a very important question which seems to be begged by the supporters of the Bill, viz., whether Native Civilians are qualified to try European British subjects.

7. The supporters of the Bill represent, though it is in connexion with the point of doing away with an anomaly, and not with that of the fitness of Native Civilians, which is assumed or taken for granted, that as Natives

* The present Under Secretary of State for India said that for 30 years Natives had been constantly and satisfactorily doing so.

have been in the habit of trying Europeans in Calcutta for many* years, and giving satisfaction, Native Civilians should try Europeans in the mofussil, and if they do, will give satisfaction there. The first part of this representation has been

shown by the *Englishman* newspaper to be a remarkable misconception of fact. Only three Natives have held office as Magistrates of Calcutta during the entire period from 1856 to date, for an aggregate of about seven out of 27 years, and for 21 consecutive years no Native sat on the bench. Again, out of the three Native Magistrates, one was removed because he gave the reverse of satisfaction. Thus the Bill cannot, as a matter of fact, be supported on the ground of Natives having sat as Magistrates in Calcutta and given satisfaction there. If, however, the facts were just the reverse, the English press, both in this country and at home, have pointed out the great difference between the position of a Magistrate in Calcutta, watched by the press, the bar, and the High Court, working where false cases against Europeans are extremely rare, and obliged to be most careful in the discharge of his duties, and a Magistrate in the mofussil, without any such checks, working where a false case against an European is far from uncommon. To this I would add that, as a general rule, cases against Europeans in Calcutta are petty and easy, such as sailors charged with being drunk and disorderly (to which charges they frequently plead guilty), while cases against Europeans in the mofussil are often difficult, and the charges more serious. Very few cases against Europeans have come before me as a mofussil Magistrate in which a marked bias was not shown, against the accused by Native witnesses, and in which the evidence did not require much sifting. But as Mr. Ilbert has himself borne testimony to the difficult nature of such cases in the mofussil, nothing more need be said on that point.

8. On this question of the fitness of Native Civilians to try Europeans, the senior Native officer consulted, Baboo Shama Churn Chatterjee, can see no difference between a civil and a criminal case, and argues that because Natives have given satisfaction in trying civil suits, they are competent to try criminal cases, whoever may be accused therein. Baboo Hurry Mohun Chundra thinks Natives who entered the Covenanted Civil Service by competition are quite competent to try European British subjects, but he goes on to say—

“It is my humble opinion that it is extremely probable that the Civilians appointed under the nomination system will in no way prove competent to be appointed District Magistrates or Sessions Judges, and they will therefore not only prove incompetent to try European British subjects, but for various reasons I venture to think they will probably not prove competent to do the multifarious responsible duties attached to the offices of District Magistrates and Sessions Judges, *i.e.*, it is my humble opinion that only those Native Civilians who have got into the Covenanted Service by competition are competent to be appointed District Magistrates and Sessions Judges, or, in other words, to try European British subjects. Those of the Native members of the Civil Service are competent who have obtained a liberal education in England, who have largely associated with Englishmen, and have become acquainted with their manners and customs, and have some knowledge of the inner life of English society, and who, on return from England, live more like Englishmen than Natives of the country. As regards the Native Civilians who have been appointed under the nomination system, my honest opinion is that they are in no way superior to the members of the sub-executive service, and have no recommendations whatever, except that they are related to some of the rajahs. Some of these men are, I think, very inferior to some of the Deputy Magistrates. To make these inferior men, who, I beg to be permitted to say, are not fit for the Civil Service, District Magistrates or Sessions Judges, would be lowering that service in the estimation of the public, and would, so far as I have been able to understand, give satisfaction to neither the Europeans nor the people of this country.

“My humble opinion on the first point, therefore, is that I agree with the ‘principle’ of the Bill in so far as its scope is to give jurisdiction over European British subjects to the Native Civilians who have entered the Covenanted Civil Service after passing the competitive examination held in England.”

Mr. Glazier says—

“The trial of a case affecting a European is generally difficult and complicated, and I think very few Bengalee Magistrates would be found

competent to deal with such cases satisfactorily, and a single mistake would be serious. Even if the Magistrate were capable and experienced, he would be in the cruel position of knowing that if, resisting the weight of local pressure, he acquitted the accused, he would be subjected to the taunts of the Native press; while, if he convicted, European opinion would similarly doubt the justice of the sentence. His position would be more difficult than that of a European Magistrate in similar circumstances, who would not be afraid of being misjudged if he convicted, and would hold cheap the murmurs, both deep and loud, of the Native press, if he acquitted.

“The position of the European in this country is an isolated one. If he is so unfortunate as to become implicated in a criminal case, he will have a host of enemies to fight against single-handed, and it is of the utmost moment to him that he should have on the bench some one who can understand his feelings and his pleas. How different is the position of a Native *bhadro lok* in a similar position; he has no lack of friends. When the license tax was introduced a few years ago, a sub-deputy Collector plundered the people wholesale for his own profit, and though the case was so clear against him that he fled to avoid trial, yet, on his ‘mookhtarnama’ being filed in the case, every mookhtar in the place signed his name.”

Mr. Newbery writes—

“At one period of my service I have had very considerable experience in cases arising amongst a low social stratum of Europeans, and I feel perfectly certain that no Native, however well educated, or whatever good use he had made of his two or three years’ residence in England, would have understood the language in which those cases were conducted, or the ideas meant to be conveyed by that language.

“I do not think, also, that our Bengalee Civilians would care in the mofussil to exercise the power, even if it were given them, especially in the case of the burley British loafer, who is the European British subject most frequently up for trial in the mofussil. It is very different in Calcutta, where there are European inspectors of police and European constables always within hail of the court. But the sight of a half-inebriated European ruffian, guarded only by a few puny Bengalee policemen, would, I think, be quite enough to ensure that our Bengalee Magistrate of the district would at once make the case over to his European Joint Magistrate.

“The argument that Native Magistrates trying Europeans in Calcutta have been a success, and that therefore they are likely to be a success in the mofussil, appears to my mind fallacious in the extreme, for the following reasons:—

1st. From the lists and dates published in the *Englishman* it would appear that Native Magistrates have been the exception rather than the rule.

2nd. That their decisions have by no means given general satisfaction.

3rd. That having an unlimited bar and public opinion to guide them, and an ever present High Court to correct their wrong doings, there are in Calcutta checks upon them which would be entirely wanting in the mofussil.”

9. As already observed, Mr. Ilbert, in introducing and supporting the Bill, observed that criminal cases against Europeans are exceptionally difficult; and he went on to say that they put a severe strain on the judicial qualities of tact, judgment, patience, and impartiality. Of the correctness of this remark there can be no doubt, and my experience leads me to the conclusion that, great as is the improvement effected in a Native by a residence in England for three years, the above-mentioned qualities are not thereby developed to a degree sufficient to render him fit to try such cases, while another equally important quality, viz., courage, is very rarely developed at all. How often we see natural good judgment and a desire to be impartial rendered of little effect in a superior Native by the hasty conception of prejudice; and what an everyday matter it is to see such a man quite unable to be impartial, because he never forgets a trifling misunderstanding or difference with another, or a fancied want of respect towards himself in conduct or action, and as a consequence cherishes hatred against that other for evermore, and never loses an opportunity of doing him an injury. Though these faults are diminished by the advantages of a short residence in England,

it is to be feared that a much longer residence, if not a change of nature, will be necessary before they can be entirely eradicated. As regards courage, how few of the best Natives possess that quality to the degree sufficient, on the one hand, to enable a Magistrate to acquit an European with the knowledge that the order would be followed by a storm of unpopularity with the Native Magistrate's fellow countrymen, and a series of attacks by the Native press, taking the shape of accusations of incompetency or wilful injustice done out of a desire to please the ruling race; or, on the other hand, to enable him to convict when he knows that a series of letters with editorial comments will appear in the English newspapers, dwelling on his unfitness for the post he occupies. Again, in the course of three years' residence in England, a Native learns nothing of the lower class of Europeans, such as guards, engine drivers, platelayers, overlookers in mills, subordinate engineers, who are the very class most likely to come before a Magistrate. Not only is a Native Civilian unable to understand and follow the thoughts, feelings, and motives of such men, but there would almost always be a serious risk of his inability to understand the language they use, so entirely different to that spoken by those with whom he came in contact in England, resulting in great injustice. The Native has not the advantage we have of constant daily practice for years in conversing with the lower classes of another race, who speak another language; and how long it takes some of us to understand them thoroughly.

10. As I consider a Native Civilian who has entered the service by competition unfit to exercise the powers with which it is proposed to invest him, it may be imagined that I hold this view much more strongly in the case of Natives appointed to the Civil Service in this country on mere nomination, and without the great advantages gained by a residence in England. Judging from what I have seen and heard of these young men, they possess no qualities that specially promise to make them one whit better than any other young men who, having a good education, are appointed as Deputy Magistrates. Some are of good family and some are not, and there is little more to be said about them. Until these appointments were made it was held that the standard of qualifications necessary for the proper discharge of the duties of offices held by Covenanted Civilians were much higher than in the cases of offices held and duties discharged by Deputy Magistrates; and I cannot imagine how it can be expected that the young men nominated as Covenanted officers will ever be more competent to be Magistrates, Collectors, and Judges, than any Deputy Magistrates and Deputy Collectors who give satisfaction in the discharge of their duties. So far as I have seen or heard of the nominees, they are unlikely to be ever fit for posts held by civilians of, say, twelve years' standing and upwards as regards the discharge of the ordinary duties of Covenanted officers. Much less are they likely to be fit to try cases of exceptional difficulty, and calling for the exercise of all the highest qualities of a good judicial officer.

11. Assuming (as it seems to me incorrectly) that Native Civilians are fit to try Europeans, the supporters of the Bill say it will do away with the anomaly of two men of the same standing and qualifications, in the same service, not exercising the same powers, which is a slur on the Native who is not allowed to exercise them. Nothing put forward in support of the Bill has been more fully treated than this plea. The English Press in India and at home have shown in letters and leading articles that India is a country full of anomalies, Hindoos and Mahomedans having each separate laws of inheritance and marriage; that native women above the lowest classes are exempted from appearance in the witness box; and that a similar privilege is granted to men of a certain rank; all these anomalies being inconvenient, and making the administration of civil and criminal justice difficult. The following passage from Mr. Wace's letter indicates that, if the Bill passes there will be a greater anomaly than that which the Bill proposes to remove:—

“The Government of India is, I presume, not prepared to put a Bengalee Civilian in charge of a Punjab district. Is it unnatural that the European, who has conquered the Punjabi, should resent being put into a position in which the Government would not think of putting the Punjabi?”

It will indeed be an anomaly if an European British subject is made liable to be tried by men who are not considered fit to try Natives of the Punjab.

The replies that have appeared to what may be called the anomaly plea go on to say this anomaly is only a privilege like those referred to above as enjoyed by the Natives, viz., by Hindoos and Mahomedans, in the shape of special laws, and by Native women and by Native men of rank in regard to exemption from appearance in law courts; that as special privileges as to choosing the nationality or race of some of the members of the courts that try them are granted to Englishmen accused of criminal offences in Turkey, Egypt, China, and Japan, which are foreign countries, how much more should a similar privilege be granted to Englishmen and Englishwomen in India, a part of the British Empire? To these I would add the question, "Are not English men and women, and other Europeans, entitled to the privilege granted to the Native sepoys, of choosing whether they will be tried by Europeans or Natives?"

As Mr. Glazier remarks, the anomaly and privilege which the Bill proposes to remove are the least objectionable and least obtrusive of all that we encounter in the courts; and, as remarked by Mr. Newbery, it is after all nothing less than a great constitutional privilege of an Englishman to be tried by his peers, and one of which he should not be deprived except on the strongest grounds.

12. Having expressed my opinion, and those of the officers consulted, on the two points specially mentioned in the Government letter under reply, I request permission to say something about some other objections to the Bill.

13. The Government of India deny that there is any intention of proceeding further in the same direction, and say the Bill is a final measure. On this point Mr. Wace says:—

"It has been pledged for this Bill by its author that it has the elements of finality in it. The utterances of the Native Press since that assertion was made must surely have disabused the Government mind of this fallacy. Over and over again it has been declared that this concession is accepted merely as one step towards absolute equality between Native and European. * * * * Let not its (the Bill's) authors shut their eyes to the fact that logic must lead them eventually to abrogate the other privileges of which at present they appear to be as stout champions as the opponents of the Bill. So far, then, from there being the elements of finality in this Bill, it seems to me but the first step to a policy the dangers of which have been fully pointed out by Sir Fitz-James Stephen."

I agree with Mr. Wace in thinking that, if the Bill is passed, it would be difficult for Government to resist outcries for the extension of its principle, and that a refusal to extend it will make the Government as unpopular with the Natives, whose aspirations to equality with the ruling race have been created by the Bill, as the passing of the Bill will make Government unpopular with Europeans.

14. It should, I think, be remembered that there is no general wish for the measure on the part of the Natives. There is only a single class, the educated Bengalee, who desires it in the least, the people generally being entirely unconcerned; if consulted, they would, I am sure, be most ready to acquiesce in Europeans enjoying a special privilege just as the Natives do.

15. Lastly, if there were no other grounds for letting things remain as they are, the strong feeling on the subject among Europeans is alone a sufficient reason for abandoning the Bill. During my long service in this country I have never known an expression of feeling nearly so strong and so universal (or so very nearly universal), and such a remarkable concurrence of opinion among non-official and official Europeans alike, as has been elicited by this Bill. If it becomes law, then all non-official Europeans in the country, or, in other words, the one non-official class from whom Government can confidently expect aid and support in a time of need, will be alienated, and I believe Mr. Wace is correct in thinking that this class will henceforward, under a sense of undeserved injury, only take part in public business to the extent absolutely necessary for their own personal interests, and will cease to do so in order to aid the administration. All great commercial undertakings in this country are due to the capital, enterprise,

and energy of Europeans, the Natives only taking a small part when success is assured, or only availing themselves of what is provided by Europeans; and any measure that will make this class less inclined to reside in India will give a serious check to the operations through which the Natives have been so greatly benefited and prospered. This check will, moreover, be the act of the Government, applied at a time when Government desire to encourage and promote private enterprise more than ever.

16. I have now endeavoured to show—

That no inconvenience has been experienced in the past in this division for want of the provisions of the Bill, and that from all the circumstances connected with the introduction of the Bill, it is extremely unlikely that any inconvenience worthy of notice can have been experienced anywhere.

That the expectation of inconvenience in the future rests on an uncertain basis; that if that basis proves more sure than seems likely, the inconvenience, whatever it may be, will only be experienced at a future time so distant that it is not advisable to legislate for it now; and that if the inconvenience is ever experienced at all it will be trifling, consisting of the occasional transfer of a case to another district, and of no importance whatever when weighed against the objections to the Bill.

That the principle of the Bill is extremely limited, not bringing about uniformity of system or equality, but only depriving Europeans of one privilege out of several, though they value it dearly, and thus effecting very little at a great and serious cost.

That the principle is based on the assumption that Native Civilians are fit to exercise the powers of trying Europeans, while the best of the two classes of Native Civilians, viz., those who have entered the service by competition, are deficient in the exceptional qualities which the supporters of the Bill admit to be required for the exercise of such powers; are also wanting in experience and knowledge of the motives, feelings, and language of the majority of the Europeans likely to be tried; and that this class of Native Civilians are therefore not fit to try Europeans, while there are no grounds for thinking that the nominated Native Civilians can ever be nearly as good as the others, much less that they will ever be fit to try Europeans.

That the plea that the Bill will remove a privilege which is an anomaly has no force in the face of the many other anomalies connected with our courts, and the privileges enjoyed by the Natives and by European British subjects in this and other countries.

That if the Bill is passed Government will have a great difficulty in making it a final measure.

That neither the country generally, nor any large section of the people, care about the measure, but only one small class, viz., the educated Bengalees.

That if there were no other grounds for abandoning the Bill, the unparalleled feeling it has created is alone sufficient for withdrawing it, as it would be in the highest degree impolitic to alienate such an important class as the non-official Europeans, to whom Government and the Native owe so much assistance, progress, and prosperity, especially at a time when Government look to those Europeans for further important steps in the same direction.

17. For these reasons I sincerely hope that Government will withdraw the Bill. Probably the only reason why there is any hesitation about it is because the non-official European community have allowed their strong feelings in regard to it to carry them away, and have used unseemly language, some even assuming an attitude of hostility towards the Government. But in this, as in all matters, Europeans may claim to be treated as well as Natives are treated. For many years the Native Press, and especially the Vernacular Press, have systematically used most unbecoming language towards the Government, accusing it and its officers of wilful injustice to Natives, of undue favour to Europeans, and of generally bad motives. This, too, has been continuously written and published by those who knew all the time how falsely they were writing. And yet all this has never affected the measures or policy of Government in the least, and has never prevented the passing or altering of laws, or the issue of executive orders calculated to

benefit the Natives. I think that in this instance the language and bearing of non-official Europeans may be overlooked also.

I have, &c.
(Signed) ULICK BROWNE.

LETTER, No. 104J, from the COMMISSIONER of the CHOTA NAGPORE DIVISION to the SECRETARY to the GOVERNMENT of BENGAL, Judicial, Political, and Appointment Departments (dated Ranchi, the 2nd May 1883.

WITH reference to your letter No. 1518J, dated 27th March 1883, I have the honour to submit the following report on the Bill to amend the Code of Criminal Procedure, 1882.

2. I called on all the district officers and Baboo Rakhal Dass Halder, Manager, Chota Nagpore Estate, to state their views on the points mooted.

3. Major Lillingston, Deputy Commissioner of Hazareebagh, states that the grounds for the proposed change are, *first*, that Native magistrates in Presidency towns are Justices of the Peace, and exercise jurisdiction over European British subjects with the general approval and sanction of the European and Native communities, and therefore Native magistrates in the mofussil should also exercise similar jurisdiction; *secondly*, that Native members of the Covenanted Civil Service having been to Europe, having become acquainted with European feelings, ideas, and customs, and having qualified themselves to take their places with European members of the Civil Service, should be allowed to exercise all the functions which the European members exercise; and *thirdly*, that by the exclusion of Native covenanted civilians from the power of trying European British subjects on criminal charges, administrative inconvenience might arise.

4. With regard to the first, the Deputy Commissioner thinks that it is doubtful whether Native magistrates in Presidency towns exercise jurisdiction over European British subjects with the general concurrence and sanction of European and Native communities, and that the circumstances of the Presidency towns are quite different from those of the mofussil, inasmuch as in the former a strong public opinion and the presence of European advocates constitute safeguards against miscarriage of justice, which are as a rule wanting in the latter. As to the second ground, he thinks that a few years' residence in Europe is not enough to enable Native civilians to thoroughly understand the ideas and feelings of Europeans. With regard to the third ground, he cannot conceive any circumstance under which the proposed change will result in any administrative inconvenience which cannot be obviated by the Government in the Appointment Department. It is further urged that the Bill does not go far enough to remove legislative anomalies, and that the Native civilians who have visited England to qualify themselves for the Civil Service, knowing as they did that they were debarred from exercising jurisdiction over European British subjects, have now no good reason to complain. The Deputy Commissioner says his views on the whole subject exactly coincide with those expressed in the Delhi memorial against the Bill published in the *Englishman* of the 17th instant.

5. Mr. Power, Deputy Commissioner of Lohardugga, states that the principle of the Bill, abstractedly considered, is an excellent one, and that it would doubtless work admirably if the people of India were all, or for the most part, philosophers. As such, however, is not the case, he thinks it would be very unwise to engraft the institutions of a free on a conquered people. India, like Ireland, is held by the sword, and by the sword alone, and anything done to weaken the prestige of the ruling nation is injudicious. There are but two entirely logical conditions—either complete freedom or absolute subjection. If a middle course be pursued, its mainspring should be maintenance of the ruling race in its position as such.

Mr. Power adds that with non-official Europeans the most objectionable feature of the Bill is that it will expose them to greater risk of injury by the institution of false charges. This objection he considers is not unfounded, as the Native civilian magistrates cannot fully realise the responsibility of bringing an accused person into court. He is easily taken in by the story of the complainant who is present before him, and his countrymen will

doubtless take advantage of his weakness in this respect, knowing how difficult it is to prove a false case as such.

6. Major Garbett, Deputy Commissioner, Singbhoom, while holding that, with the safeguards provided, no harm is likely to result from investing Native civilians with jurisdiction over European British subjects, considers that there is no immediate necessity for the change, and that circumstances tend to show strongly that the policy of the measure is doubtful.

7. Baboo Rakhal Das Haldar, manager of the Chota Nagpore Estate, says that no general inconvenience is likely to result from the present state of things. He maintains that the British Government, like all other Governments, is founded on force, and deprecates any measure tending to impair that force.

8. Mr. Risley, Officiating Deputy Commissioner, Manbhoom, has submitted an excellent report on the whole question, and I cannot do better than quote below his remarks *in extenso*.

Mr. Risley writes—

“It would be out of place for me to reproduce here the arguments which have been brought forward against the Bill by Sir James Stephen and Sir Louis Jackson in the *Times*, and by Mr. Seton-Karr in the *National Review*. What has been said by those high authorities will, I assume, be considered at the proper time and place, and the objections taken by them having been clearly and forcibly stated, need not be repeated here.

“I would submit that one point bearing upon the principle of the Bill has not yet been prominently brought out. It is a question of fact rather than of speculation, and I propose to say a few words upon it here. It is admitted in the Hon. Mr. Ilbert’s speech upon the Bill, that the criminal cases in which Europeans are charged are few in number and of exceptional difficulty. It will also be admitted that, in considering whether a class of officers should be admitted to exercise a special jurisdiction, regard should be had to the question whether, under ordinary circumstances, they are in a favourable position to become familiar with the facts and combinations of facts with which that jurisdiction is concerned, and whether, as a rule, they are so conversant. Now the European British subjects who are likely to be affected by the Bill belong for the most part to one of the following classes:—

- “ (i.) Planters, including indigo, tea, coffee, silk, and cinchona planters, and Europeans engaged in zemindari business.
- “ (ii.) British soldiers and sailors.
- “ (iii.) Europeans of the lower classes, including railway officials, mechanics, and vagrants.
- “ (iv.) The wives and female relatives of the persons included in classes (i), (ii), and (iii).

“Can it be said that covenanted Native civilians who have visited England know enough, or can know enough, about these classes, in particular about the last three, to be in a position to deal satisfactorily with criminal cases in which they are concerned? Speaking from what I know and have heard on good authority of the manner of life of Native civilians in England, I have no hesitation in saying that, as a general rule, they are disqualified to try these persons criminally, by unavoidable ignorance of their habits, passions, prejudices, and peculiar moral standards. It would be difficult to find two men more hopelessly incapable of understanding one another than a highly-educated Native and a British soldier or sailor; and yet, for the purpose of trying a man criminally, the power of entering into and appreciating his point of view is the one thing which is most required.

“By referring to the manner of life of Native civilians in England, I do not mean to imply that it is otherwise than creditable. If anything, I should say it is too quiet and too decorous to give them the knowledge of European life which is one of the objects of bringing them to England. I have seen something of Native gentlemen, civilians and others, in Oxford, and I have heard a great deal from tutors and persons qualified to speak with authority. As a rule, I think Native gentlemen in England see very little of society as it really is. They fall into the hands of philanthropic cliques, and see everything from their standpoint. They do not hunt, shoot, play games, or enter into any of the pursuits which bring young Englishmen in contact with their social inferiors, and teach them in a gradual, indefinite way, how the

large number of people who are not ladies and gentlemen look at things, and by what motives they are likely to be influenced. Native gentlemen in England live their life apart in an atmosphere of books and theories. At Oxford they are chiefly to be seen at the Union, where they show remarkable fluency in speaking on all subjects, and their speeches are quite up to the general level of Union oratory. But for all that, they are outside the real life of the place, and outside of the practical influences which an English university is supposed to exercise. Least of all do they learn anything regarding the lower classes of Englishmen, the raw material of the Army and Navy, and the men from among whom mechanics and artisans are recruited for work in India. So far as regards the lower classes of Europeans. It may be said, however, that planters, at any rate, come from the rank of society with which Native gentlemen found themselves thrown in contact in England, and that here, at any rate, their knowledge is likely to be fairly complete. Here again, however, I think that the causes indicated above, as cutting off Native gentlemen in England from any adequate knowledge of the lower classes, do operate to a certain extent. Nothing is more striking in many of the criminal cases, in which planters are defendants, than the thoughtless school-boy spirit in which the injury complained of has been done, and the sheer ignorance which has often indicated it. As often as not, the planter is nothing more than an English school-boy, who has not made a success of his school career, and who is turned loose in India to make his living. If he commits an assault, as he frequently does, no doubt he must be punished; but if a wise discretion is to be exercised in awarding the punishment, and the culprit is to recognise the justice, the Judge ought to be a person capable of understanding all the bearings of the case. I do not think that the average Native civilian, even though he may have spent two or three years in England, is in a position to take quite a sound view of the class of case I describe. I do not say he will necessarily deal too harshly with the European; he may let him off too cheaply. But his experience cannot have given him the knowledge and the tact which are required to treat the case properly, and in any event his order will have little or no moral effect on the offender.

"I have written at some length upon these points, without having said all that might have been said. The facts are so obvious that a mere reference to them is sufficient to suggest the conclusion. I need hardly say that nothing is further from my intention than to imply any criticism upon the Native gentlemen who visit England in order to study for the Civil Service. It is not their industry or ability that is called in question. It is merely alleged that from sheer force of circumstances they are so placed as to be unable to acquire certain experience which is essential to qualify them to exercise criminal jurisdiction over certain classes of Europeans. I would admit that they might possibly be competent to deal with criminal charges against Europeans of the classes which they know, though even this is doubtful. But the distinction between these classes and the lower classes, between the educated and refined classes and the uneducated and unrefined classes, is a very wide one, and I think the Indian Law Reports can furnish instances in which even European Magistrates have been unduly severe for lack of that very knowledge of their inferiors which the Bill assumes Native civilians will acquire by two or three years' residence in England.

"Then there is the question, in some aspects a delicate one, of trying cases in which European females are concerned. It has been pointed out in one of the daily papers that criminal charges of adultery are not unknown among Europeans of the lower classes in India, and that such cases are frequently very difficult for a European Magistrate to deal with. I do not see how a Native civilian can possibly be competent to treat such cases satisfactorily. If his training in England has given him no insight into the manners of the lower classes of Englishmen, still less can it have taught him anything about their domestic relations. Every one knows that there is much apparent coarseness and brutality in those relations, combined sometimes with real affection and good will. It is hard to expect a foreigner to go behind the mere evidence of facts on the record to draw inferences of one kind and another, and to decide on the strength of those inferences. But this is in many cases the only means of doing substantial justice. On matters like this,

it is difficult to write very precisely. One can only state general impressions, and appeal to general experience to bear them out.

“Regarding the question of administrative inconvenience, I have really very little to say. While there are so few Native civilians as there are at present, it is difficult to see how the point can become one of pressing importance. The utmost that can happen will apparently be a slight increase in the number of transfers of criminal cases from one district to another, which can hardly be deemed a serious evil.”

9. As for my own views of the matter, I must say that, viewed as a legislative enactment and as a matter of theory, the only objection I see to the Bill in itself is that it takes away from Government the power to give European Deputy Magistrates powers to try charges against European British subjects; but this anomaly could easily be removed by adding these officers to the list of persons declared capable of being Justices of the Peace in section 1. But the case assumes a different aspect when the political expediency of the enactment comes to be considered.

10. If the cases to be tried by Native Magistrates were all ordinary cases, in which there is some truth in the statements of the prosecution, and where the accused will, at least if tried impartially, be found to have committed something resembling a crime, I do not see why a Native Magistrate should not be trusted to decide these cases, even when the accused are Europeans, with quite as much confidence as European Magistrates. The average Native Magistrate belonging to the class contemplated in the Bill is certainly not inferior to his European fellow Magistrates in judicial acumen, or in fairness or honesty of purpose, or in anxiety to arrive at the truth. The prevailing fault among these officers is a love of over-refining; but when this fault, as will be almost invariably the case, in the class of officers dealt with in the Act, is tempered by a calm judgment, it is not likely to lead them into error more often than even European officers of experience and sound judgment are sometimes led.

11. If, however, the case for the provision is, as is too often, a tissue of skilfully concocted lies, I must say that I think that Native officers, even though they are intellectually equal to their European compeers, are not so well fitted to deal with it. The case is sure to be got up from a Native point of view, and is, therefore, if well got up, likely to appear true to an officer accustomed to the same lines of thought; but Native officers can never be so likely to detect the points which a European Magistrate, from a knowledge of the habit and modes of thought of his countrymen, would at once fix on as showing the charge to be entirely false; and therefore a European falsely accused before a Native Magistrate would be deprived of one of the most valuable sources of evidence in his favour. I entirely agree with Mr. Risley in his remarks showing how impossible it is that even Native gentlemen who have lived a long time in Europe should have acquired that intimate acquaintance with the thoughts and habits of all classes which is necessary for anyone who is to be trusted to judge cases which are entirely false. Again, I think that it is impossible that cases involving questions as to the relations between the sexes can ever be dealt with by a Native Magistrate as by one who knows the habits and modes of thought of people belonging to the classes to which those connected with the case belong; and it will be impossible even to satisfy the accused persons, or even the prosecutors in such cases, that their case has been satisfactorily inquired into, unless the officer who tries the case is a European.

12. The feeling of want of confidence in the Judge is another very strong argument against the Bill; and though I by no means say that accused persons should be consulted as to the Judge by whom they are to be tried, I must say that, before a class of the community already numbering many thousands, and likely to increase largely in number, are deprived of a privilege which they value, and are made liable to have their cases decided by Judges whom they distrust as being unacquainted with their habits and modes of thought, it should be shown that the change is one which is rendered absolutely necessary by an administrative necessity which it is impossible to evade. Nothing is more certain to create discontent than a feeling of want of confidence in the Judges who administer criminal justice; and though this feeling may be to some extent founded on sentimental con-

siderations, and not on solid argument, it is for that reason more likely to be tenaciously clung to by the great mass of those whose valued privilege the Bill will infringe.

13. There is certainly at present no administrative reason for trampling on these prejudices; and therefore, while I myself see no reason for doubting that Native Magistrates are not as fully competent to try cases in which Europeans are accused, as European Magistrates, except in cases of false charges and those involving questions as to the relation between the sexes, yet, I must say that, looking at the great dissatisfaction it would cause to the great body of European British subjects, nothing but the most imperious necessity could justify the passing of the Bill, and this necessity certainly does not exist at present.

I have, &c.
(Signed) J. E. K. HEWITT.

LETTER from the OFFICIATING SECRETARY to GOVERNMENT, Bengal, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 591J.D., dated 12th May 1883).

IN continuation of my letter, No. 567J.D., dated the 10th instant, I am directed to submit, for the information of the Government of India, copies of a letter* from the Commissioner of Bhagalpur reporting on the Bill to amend the Code of Criminal Procedure, 1882.

* No. 708J., dated the 1st May 1883, and enclosures.

(Signed) F. B. PEACOCK.

Enclosures referred to in preceding Letter.

No. 708J.

LETTER No. 708J, from the COMMISSIONER of the BHAGULPORE DIVISION and SONTAL PERGUNNAHS to the SECRETARY to the GOVERNMENT of BENGAL, Judicial Department (dated Bhagalpore, the 1st May 1883).

I HAVE the honour to submit the report called for in your No. 1518J, dated 27th March last, regarding the amendment of the Criminal Procedure Code, 1882.

2. I have consulted selected officers. I submit the replies of the officers noted in the margin in original, abstract of those of others below, and give my own opinion last.

Mr. W. Verner, Judge of Bhagulpore.

„ Cowley, Judge of Purneah.

„ Worsley, Magistrate of Monghyr.

Mr. F. SKRINE, *Magistrate of Bhagulpore*.—Considers the principles of the Bill to be as unjust as they are impolitic, because —(A) to be tried by his peers is an Englishman's birthright, as old, nay older, than Magna Charta itself. (B) That right has been invariably respected in all enactments affecting the status of European British subjects since the very commencement of our rule. (C) The right to be tried by his own countrymen has thus come to be regarded by every Englishman in India as his dearest, indeed his only, privilege.

The principle that an Englishman should be tried by his countrymen has been invariably upheld in our intercourse with all Oriental nations. Witness the capitulations which prevail throughout the Ottoman Empire, and the treaties with China, which generally remove the jurisdiction over British subjects from the Native tribunals to the Consular Courts.

Mr. A. WEEKES, *Magistrate of Purneah*.—Considers the principle of the Bill unwise, unsound, impolitic, and unnecessary. No inconvenience has, of course, yet been felt, as there is no officer of the kind contemplated by the Bill in the Purneah District.

Mr. R. PORCH, *Magistrate of Maldah*.—Is opposed to the principle of the Bill, because, upon the basis of an experience of 22 years, he considers that no European under trial, unless he be ignorant of the common ways of the country as to forgery, perjury, and fabrication of false evidence, could have any confidence in the impartiality and competence of a court presided over by a

Native officer, covenanted or otherwise. Native officers, by their own ways and standards of living, thinking, and acting, show and admit themselves to be incompetent to deal with the ordinary issues involved in cases against Europeans, whose ways and motives they do not understand. The occurrence of any administrative difficulty is not foreseen.

Mr. W. OLDHAM, *Deputy Commissioner of Sonthal Pergunnahs*.--Points out that the first act following the rebellion of 1855 in the Sonthal Pergunnahs, was to put the people entirely under European officers, because it was felt and found that Native officials were incapable of treating with justice the wild tribes, whom they regarded as both savage and alien, to whom they could not listen with patience and without contempt, whose positions, feelings, motives, and actions they could not realize nor judge of. This want of sympathy was comprehended by the wild people, who regarded the Native officials with intense mistrust and thorough aversion, as under their *régime* the Sonthals were at the mercy of every intriguer who knew how to employ the machinery of the Native courts. Since 1873 a few Sub-Deputy Magistrates and Collectors have been employed in the district, with petty powers under the supervision of European officers; and since 1882, one picked Native Deputy Magistrate has been in charge of a minor subdivision. As regards the sub-deputies, there has not been one whose conduct in cases Mr. Oldham, during his term of office, has not had occasion to animadvert upon, as approaching that which has been assigned as a chief cause of the Sonthal rebellion. As regards the picked Deputy Magistrate in charge of a subdivision, he has worthily fulfilled the trust reposed in him. Nevertheless several petitions have been received during his short incumbency, complaining that it is contrary to Government orders to employ a Native officer, and asking that an European may be sent.

This review has two aspects. If the competency of an ordinary Native Magistrate to administer a Sonthal subdivision can be challenged for the specific reasons set forth, as it certainly is challenged, the competency of a still higher class of Native officers to try Europeans is to be challenged on precisely analogous grounds—foreignness of feeling, want of sympathy, and the ease with which the machinery of the courts can be manipulated against the Europeans. The other view is that with the distinction so prominently drawn by the people of his district between a European and Native officer, it cannot but have an ill-effect for it to be seen that Europeans are amenable to a jurisdiction from which the Natives shrink, and against the exercise of which they are so ready to appeal.

Mr. Oldham has made successful efforts to gain intimacy with some of the Native officers with whom he has been brought into contact during his service. He has been struck invariably not only by the want of sympathy with which his Native intimates regarded such a race as the Sonthals for instance, but by the mingled aversion, disgust, and contempt with which they looked upon them. Precisely the same feeling was evidenced as regards Europeans of the lower orders, especially when they were uncouth, rough, and noisy. It is not likely that the residence of a Native civilian in England would impart to him much sympathy with or knowledge of the lower orders.

Instances are given of the great severity with which Native officers punish crimes of violence, and of the manner in which they regard violence, no matter how extenuating the circumstances under which it was used; and it is noticed that the most frequent class of cases in which Europeans are concerned are those in which violence has been used by them, with or without extenuating circumstances.

As regards persons accused of offences, it is a common fault of the magistracy to be guided by knowledge gained otherwise than in court. Few officers are free from this, and the evil exists in proportion to the extent to which the officer is accessible to or subject to extraneous influences.

Native officers, in Mr. Oldham's experience, have shown this tendency in a far greater degree than their European colleagues, and he has never known a Native officer who regarded this tendency as an evil.

Generally it is a fact that mofussil justice is very far from perfect. At present, cases in which Europeans are concerned are those which are tried with the greatest care and the most consideration. The new Bill would take

away this distinction in a measure. They would receive, in exchange for the good law and the justice of the presidency, and the more careful law of the mofussil, the law and justice of the mofussil in all its inferiority. They would fare worse than this, as they would be tried by men incompetent to try them. They would be not only misunderstood, but be tried by courts exposed to extraneous influences.

Another difficulty, not insurmountable, but likely to be practically embarrassing, is the fact that Europeans in this country do not pay to mofussil courts, with their rough and undignified appurtenances, the respect which they would pay to similar tribunals and officers at home. Grave scandals would occur, and the accused might become involved suddenly in most serious consequences, and liable for acts which, with a European officer dealing with him, he would have no opportunity or temptation to commit.

The Deputy Commissioner is therefore opposed to the principle of the Bill. On political grounds it would be impossible to put it into force in his district, and the same reasons must have some application elsewhere. It would operate to the serious disadvantage of the European community. It would involve complications of which without it there is no risk, and it would embarrass the Native civilians whom it invested with powers.

The Deputy Commissioner can imagine no administrative difficulty as likely to arise if the Bill be not passed, as certainly none exists now.

BABOO SOSHI BHUSAN DUTT, *Deputy Magistrate of Muddhepoora*.—Although there is no administrative difficulty now, thinks it may be felt hereafter, when the number of Native covenanted civilians increase, and as crime increases with the increased influx of Europeans into the country. Is of opinion that, “however good in principle the Bill might be, considering the present state of feeling, its passing into law will unnecessarily create a breach between the Europeans and Natives.”

BABOO WOOMA CHURN BOSE, *Deputy Magistrate of Banka*.—Europeans have waived the valued privilege of being tried by their countrymen, so far as regards their amenability to Native Judges in civil matters, and also in criminal cases in Presidency towns. Native Judges and Magistrates have hitherto discharged their duties in these cases with integrity and impartiality; therefore there can be no wrong in extending the system prevailing in the Presidency town to the mofussil. It is true, there is between the European and Native Magistrate an essential race difference, which is a judicial disqualification in the latter, and renders him unfitted for exercising the powers proposed to be vested in him, owing to his ignorance of European ways. But the jurisdiction over Europeans is only to be granted to carefully selected Native civilians, who have made their way into the service by competition and sojourn in England, and who thus have had opportunities of acquiring a knowledge of, and insight into, European ways. There still remains the question of difference of race. If Native civilians are open to the charge that on this account they are rendered less possessed of tact, judgment, and impartiality, or if it renders Europeans less disposed to submit and confide in their jurisdiction, then the powers contemplated in the Bill should not be conferred.

Mr. S. S. JONES, C.S. *Sub-divisional Officer of Deoghur*.—Cannot say that members of the three first classes named in the Bill are not competent to try European British subjects, or maintain that all British subjects are entitled everywhere in India to be tried only by European British subjects. In towns they are not so tried. The question is one of administrative ways and means, the end being good government and the contentment or acquiescence of those affected by any legislative change removing a felt difficulty. Knows of no administrative difficulty as yet to have arisen, nor likely to arise within the next ten years.

Mr. W. SMITH, *Sub-divisional Officer of Doomka*.—Disapproves of the Bill. Had experience in European cases at Rajmehal for four years (probably at the time of making the railway). Some of the parties were newly arrived Scotch women, and cases between husband and wife; cannot conceive it possible for any Native Magistrate to have dealt with such cases successfully. He could not have understood the language used, or appreciated the domestic differences involved. He would have found it difficult to have his authority or office respected, specially while the parties were angry; and the attempt

to deal with a simple offence might have led the European concerned to become involved in a serious one.

BABOO SHARODA PROSHAD CHATTERJEE, *Personal Assistant to Commissioner*.—Thinks the present system under which the most highly educated Native of India cannot try a European British subject, while he can try any other cultivated European or American, indefensible. The pleas which have been urged against the Bill, viz., the ignorance of the Native Judge as regards the habits of, or want of sympathy with, the European British subject, apply in the same force to the other cases referred to. The only intelligible ground that can be adduced against the Bill is that the change in the law would lessen the prestige of the conquering race in this country, but the persons (Europeans) likely to appear as criminals belong to the lowest social strata, and the trial of these cannot lessen the awe and respect which the name of an Englishman inspires in India.

Criminal statistics (in this part of the country at least) do not bear out the assertion that Europeans are likely to be harassed with false complaints. The number of these is small.

BABOO GOSAIN DAS DUTT, *Deputy Magistrate of Kissengunge*.—It is impossible for any man holding liberal views to deny the expediency of removing distinction founded merely on differences of race or class, provided that the evil consequences of such removal do not more than counterbalance the benefit that must naturally result from action based on sound political principles, and provided that the proposed change is one of sufficient magnitude to justify the rousing of an opposition which, even though it be unreasoning, is in itself an actual evil. Thinks that there is very little or no probability of administrative inconvenience arising if the Bill be not passed. The powers, if granted, should only be given to those covenanted civilians (native) who have come back from England, and are acquainted with the manners and customs of the people whom they will have to try. Otherwise, to extend the jurisdiction to covenanted civilians who have been selected in this country, would be to put up a tribunal quite ignorant of the manners and habits of the people whom they have to try, and consequently the results of such trials are never expected to give any satisfaction.

3. My own opinion is as follows:—I concur in all the reasons which have been adduced by the various officers who have objected to the Bill. I sum up my objections thus—

- (a.) Native Magistrates, &c., are incompetent to try Europeans on account of their ignorance of the habits, actions, and modes of thought of the Europeans. The disqualification extends to the covenanted Native civilians who have visited England, as it is impossible to suppose that a three or four years' residence in that country, on the part of a youth, for the purposes of study, can have given him a really practical and sympathetic knowledge of the European character. It extends in the fullest degree to those who have never been to England (and who are likely apparently to form the bulk of the officers employed in the future), and upon this head it seems sufficient to ask the question whence, with the existing state of inter-communication between Europeans and Natives in this country, can these last be supposed to have acquired their knowledge of European character and ways?
- (b.) The proposed change, if carried out, will place the Europeans under greater disadvantages than at present. Whatever may be the case in the large Presidency and other towns, it is an undoubted fact that in the mofussil a certain respect is felt for a European, as such, whether it be in the case of an official or settler. In the latter, the protection thus afforded is one of the few compensations enjoyed for the life of isolation which he lives. If the right of being tried by his countrymen is taken away from the European, increased recourse to false cases and such like will certainly be had by those who resort to such practices.
- (c.) Native officials in the mofussil would not be able to command respect for themselves and their offices. This would specially be the case with Europeans of the lower orders, and very grave scandals would be the result. This is a real practical danger which will be testified

to by many officers. The argument that this difficulty has not been felt in the exercise of jurisdiction by civil courts over Europeans is not a safe one, for the temper of an accused in a criminal court is quite distinct from the attitude of the parties to a suit in the civil courts.

(d.) The passing of the Bill will widen and perpetuate the breach between Europeans and Natives that has already been opened by its proposal. There is no doubting the depth of the feelings that have been already aroused. Europeans and Natives of enlightened character, who have worked together heretofore with common feelings and single aim, are almost to a man divided upon the present subject, where, that is to say, the latter support the Bill; for as a fact only a few of the advanced section of the Native community are interested in the matter. The bulk of the people are ignorant even of the proposals, and, if I am not mistaken, the old fashioned native of good degree, when he came to understand the measure, would be astonished at and reject it.

(e.) The whole European community will be bitterly alienated from the Government. Is this politically safe? Or if there be no danger from such a state of things, is it justifiable or desirable to drive them into such an attitude? For their services in the mutiny, and in advancing the country, are the European British subjects entitled to no consideration?

4. I believe that at the present or in the future, at all events for years to come, there is absolutely no administrative inconvenience likely to occur from matters remaining as they are and have been.

5. Although not instructed to do so, I consulted four non-official European gentlemen upon the question—selected persons, who have spent long lives in the interior of the country, living in close and most cordial relation with Natives of all classes, who have, some of them, made large fortunes as the fruit of their labours. These men might be expected to give just and reasonable opinions, unaffected by the excitement that the Bill has aroused. As one man, they give their voice against the proposed measure.

I have, &c.

(Signed) G. N. BARLOW.

LETTER, No. 464, from the SESSIONS JUDGE of Bhagulpore to the COMMISSIONER of the Bhagulpore Division, dated Bhagulpore, May 2, 1883.

You have asked me for an expression of my opinion on the principle of the Criminal Procedure Code Amendment Bill, and also whether I think that the present system results in inconvenience.

I am not sure that the Bill rests on any principle. There appears, however, to be underlying it some such idea as this:—*If a European is allowed to try a Native of this country on a criminal charge, a Native of the country should be allowed to try a European on a similar charge.* Judging by much of what appears in print, the arguments of those who entertain this idea are that one man is as good as another, that one race is as good as another, that a conquering race is no better than a conquered race, and so on. On the other hand, the arguments of those opposed to the idea are often that one man is better than another, that a conquering race is superior to a conquered race, and so on. Arguments of this kind lead to no conclusion, are dangerous, and, it seems to me, on a question of practical government, irrelevant.

The probable results of the Bill appear to me the best guide in determining whether its principle is sound, if that above-noted can be called a principle. I divide the results into advantages and disadvantages.

I.—ADVANTAGES.

First advantage.—Proclamation or advertisement to the world that, after a competitive examination, selection by Government, or some other test, Natives of this country are entitled to sit in judgment on British-born subjects.

Second advantage.—Gratification experienced by Natives of India by this proclamation or advertisement.

Third advantage.—Gratitude thereupon.

Fourth advantage.—Administrative convenience.

It is possible to underate the importance of the first of these advantages. But it should be remembered that the true liberal is a man of ideas, and in the interests of the nations at large these ideas should be proclaimed. I do not attribute much weight to the second and third advantages. The gratification will be confined to a small section of the community, and the gratitude to one still smaller. The fourth advantage, namely, administrative convenience, requires consideration. Were it apparent that by the Bill the administration and government of the country would proceed much more conveniently, there would be at least one practical as opposed to a sentimental argument for the Bill. But as a matter of fact the existing system presents, and seems likely to present, no material inconveniences. The additional administrative convenience secured by the Bill would be infinitesimal.

II.—DISADVANTAGES.

First disadvantage.—Dismay of European British subjects at the loss of a highly valued privilege.

Second disadvantage.—Race exacerbation.

Third disadvantage.—Check to the material prosperity of the country.

Fourth disadvantage.—Comparative unfitness of Natives of this country for the trial of Europeans.

The first of these disadvantages, like some of the advantages previously noted, is to some extent a matter of sentiment. In the one case, however, the sentiment is of mushroom growth, while in the other it is like a tree which has become deeply rooted in the lapse of centuries. The second disadvantage is momentous. A measure which must in a country like India increase race antagonism is, so far, condemned. The most ardent liberal, the man of the most advanced views, would probably admit this. To those who hope for a time when the peoples of India will freely join in the government of their country, there could be no greater blow than the present Bill. What might come last has been put first; what might have been the crown of the edifice, is now a stumbling block in the path of the builders. The third disadvantage arises from the fact that anything which promotes alarm, race antagonism, or a feeling of distrust, whether against the people or the Government, must tend to check the influx of European capital; and most men who have thought over the matter agree that the great material want of India is capital. About the fourth disadvantage there can, I think, be little doubt. Owing to many causes to which I need not refer at length, a Native gentleman would, when trying a European British subject, stand at a disadvantage beside his European compeer. No doubt by a residence in England this comparative unfitness would be lessened, more especially in those rare cases where, owing to emancipation from caste feelings and other fortunate circumstances, the Indian gentleman was able to become intimate with English people, English habits, thoughts and feelings, and English family life. But it may be stated without fear of contradiction that, *ceteris paribus*, the European officer will be more fit than the Native to try Europeans. It may be said that by a parity of reasoning Native officers are more fitted than Europeans to try Natives; but without entering upon the discussion of this question, and of certain political questions connected with it, it is sufficient to say that this, even if admitted, forms no argument. It can hardly be maintained that because Europeans, though more unfitted for the purpose than Natives, try Natives, therefore Natives, though more unfitted for the purpose than Europeans, should try Europeans. Two blacks do not make a white.

The disadvantages of the Bill appear to greatly outweigh its advantages, and it must be remembered that it is for the advocates of change to prove their case.

I have, &c.
(Signed) W. H. VERNER.

LETTER, No. 132, from the JUDGE of PURNEAH to the COMMISSIONER of the BHAGULPORE DIVISION, dated Purneah, April 9, 1883.

IN reply to your Memorandum No. 455J, dated the 2nd, and received on the 5th of April, I have the honour to state my opinion on the Bill, No. VIII. of 1883, to amend the Code of Criminal Procedure, 1882.

2. Section 2 of the Bill is permissive, and empowers the local government to appoint persons, whether Europeans or not, holding certain offices, to be Justices of the Peace; but section 3 introduces a complete change, and directs that all Sessions Judges and District Magistrates shall, in virtue of their respective offices, be Justices of the Peace. The Bill then empowers any Native Sessions Judge or District Magistrate to try European British subjects.

3. The reasons assigned for the Bill are that "it was thought anomalous that while Natives of India were admitted to the Covenanted Civil Service, and held competent to discharge the highest judicial duties, they should be deemed incompetent to be Justices of the Peace and to exercise jurisdiction over European British subjects outside the presidency-towns."

4. If this be an anomaly, it arises out of the position of Europeans in this country. Englishmen conquered India by force of arms; they hold it in a great measure by the prestige which still attaches to them as the conquerors, and any change which will be interpreted by the great mass of the people in diminution of that prestige ought to be avoided, if British dominion in India be worth retaining. In the eyes of the Natives at large, and more especially of the turbulent and uneducated among them, the effect of the Bill, should it become law, must amount to a degradation of the personal status of Englishmen. To those races in India among whom our Native Army is recruited the propositions of the Bill must be a greater anomaly than the disqualifications which it is sought to remove.

5. If the Bill become law, a few Natives will have received, or will be in a position to receive, authority to try European British subjects; but the benefit, if there be any to the administration, can only be gained, so far as my experience goes, at the expense of the feelings of by far the greater portion of the present European community in Bengal.

6. It is in the interests of justice that any person placed on his trial charged with an offence should have confidence in the court which is to try him, and should feel that the court is capable of fully understanding his actions or omissions, and the privilege or right of trial by one's own countryman can be justified on this ground.

7. Natives of India, who have not been educated in England, cannot enter into the feelings and motives which prompt Englishmen, and more particularly Englishwomen, to action, and a Native Judge or Magistrate in that position is, on that ground, not so qualified to deal with Europeans as is a countryman of the latter. Some of the Native gentlemen who have been to England might have the necessary qualifications, but a general rule should not be based on a few exceptions.

8. On litigation generally, the views of Natives and of Europeans differ materially. Some years ago, when I was in Chittagong, the Magistrate-Collector visited a village in that district, and was told that the family of a young man who had then recently died at a comparatively early age, had sustained a great loss because the young man, though not a lawyer, only a litigant, had already successfully fought out a number of cases in our courts. The narrator admiringly added, "What would he not have done had he lived longer." This love of litigation is general, and is always borne in mind by Judges and Magistrates. It is characteristic of the people in Bengal. I believe few Englishmen who are not professional lawyers would ever think of either profit or pleasure in litigation, or would not rather avoid it.

9. I have on many occasions found courts, presided over by Native gentlemen, rejecting evidence, almost as a matter of course, because it consisted of statements made by relatives or dependents of one or other of

the parties. Would a general assertion of that description be frequently or ever used in courts of justice in England? Such reasoning implies that perjury and subornation of perjury are believed to be ordinary weapons of attack and defence; and it shows that judgments are based largely on the probabilities arising out of the circumstances of the cases under inquiry.

10. It is not, however, only in modes of thought and characteristics, but also in habits of living, in social and domestic institutions, that Europeans and Natives differ. A Native, however well educated, must find it difficult to understand a European; and I therefore think that the objection of Europeans to being judged by Natives rests on more than a sentimental foundation.

11. Englishwomen are more disadvantageously situated in this matter than Englishmen. Is it not even an indignity that European ladies should be liable to be tried by men who allow polygamy, and who regard females as inferior beings, not fit to be trusted to appear in public?

12. It may be urged that Natives are tried by Europeans; but this is an anomaly which probably cannot be removed till Europeans cease to govern India, and which exists within comparatively narrow limits. Most trials of Natives are presided over by Native officers, and in all sessions courts in Bengal trials are held either with assessors or with jurors, some, generally all, of whom are Natives. Even if one admit, which I do not, that Natives object to be tried by Europeans, that is no reason why Europeans should be unnecessarily subjected to tribunal which they deem to be objectionable.

13. It is said that race-feeling should be allowed no weight. That is true if the term be used in an invidious sense; but if it mean superior trust in men believed to have inherited those qualities which have given actual pre-eminence to any particular race, its existence cannot be ignored in practical legislation.

14. In a country like India, where many different races exist side by side, and where personal privileges are extensively recognized, legislation should studiously avoid raising questions of race unnecessarily. Judged by this standard, and by the result of its introduction, the Bill must be condemned.

15. I think the Bill is erroneous in principle, because it tends to place certain persons who may be charged with offences under disadvantages to which they are not now subject. It can only be justified on the ground of some existing and definite administrative difficulty; it is entirely unjustifiable if it be based in any degree on the wish of individuals to exercise jurisdiction. Where no legal or moral principle is involved, that person has the right to the greater consideration who has the greater interest at stake. Whether, then, is the question now in issue of more importance to the accused or to the Judge? Clearly a Judge, acting simply as such, has nothing to gain or to lose by trying any particular person. It is not alleged that the present system enables criminals to escape justice, and till there be administrative necessity for a change, there is no good reason why a change should be made.

16. It has been suggested that opposition to the Bill indicates a wish to hinder educated Natives of India from advancing socially and politically; but this is wrong. Ample field for their energies is being opened out to them in the system of Local Self-Government now under consideration.

17. The question of administrative inconvenience raised in connexion with the Bill hardly falls within my province; but I fail to see that any such inconvenience as would justify the Bill has arisen, or is likely soon to arise. If it should ever hereafter arise, it might be met by giving the local Government authority to invest selected Magistrates of Districts or Sessions Judges with the necessary authority. I myself, however, see no present likelihood of that necessity arising.

I have, &c.
(Signed) F. COWLEY.

LETTER, No. 508J., from the MAGISTRATE of MONGHYR to the COMMISSIONER of the BHAGULPORE DIVISION, dated Monghyr, April 21, 1883.

WITH reference to your No. 456J., dated 2nd instant, forwarding copy of letter from the Judicial Secretary to the Government of Bengal, No. 1518J., dated 27th ultimo, on the subject of "A Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over "European British subjects," I have the honour to report as follows:—

2. In one of two reports which, as Magistrate of Mozufferpore, I submitted to the Government in 1880 and 1881, on the Bill to amend the Code of Criminal Procedure, Act X. of 1872, I suggested myself, (1) that Native civilians holding the appointments of Sessions Judge and District Magistrate should be Justices of the Peace by virtue of their appointments; (2) that the Government should be authorised to appoint such Native Deputy Magistrates as it might think fit to be Justices of the Peace; and (3) that the privilege of selecting their own court of appeal should be withdrawn from European British subjects in cases tried by Magistrates. I based my first proposal on the grounds that it was anomalous that an officer in the high position of a District Judge or District Magistrate should be debarred from exercising powers possessed by his own subordinates, and that if such an officer was competent to discharge properly the important and multifarious duties which devolved on him generally, it was unreasonable to suppose that he was unfit to try a European British subject. My second proposal was founded on the experience which I had gained as a District Magistrate, and in the course of which I had known Native Deputy Magistrates and Native Subordinate Judges to act with impartiality and due consideration towards European complainants and witnesses in criminal cases, or towards European parties and witnesses in civil suits. Some of these Native officers enjoyed the fullest confidence of the non-official European residents of the Mozufferpore district. My third proposal was dictated by a sense of the injustice which might, at any time, be caused by a wealthy appellant compelling a poor complainant to defend a case before a distant appellate court, and of the unfairness of allowing a convicted person of a particular race to take his choice of two appellate courts which the law presumed to be equally competent to hear his appeal.

3. I still retain the opinion which I formerly expressed on the third point; but on the first and second points I have seen reason to modify my views.

4. I admit that I was wholly unprepared for the exhibition of angry and stormy feelings which the present Bill has aroused among Europeans in India. Some of this animosity may be the result of ignorance, some the effect of example; but I feel sure that in the main it is far too real and serious to be treated as a passing storm. One effect of the agitation and counter-agitation that have been set on foot has been to place before the public all that can be possibly urged for or against the Bill; and, for my own part, I am bound to say that I can no longer regard the changes proposed in the Bill merely in an administrative point of view. To estimate "the principle of the Bill" aright, it seems absolutely necessary to take into account the state of social relations between Europeans and Natives, which, though apparently friendly, and in some instances cordial in recent years, seem, when put to the test, to have rested generally on little solid foundation. In such a state of society, I cannot consider the principle of the Bill to be sound. If the Bill becomes law, it is only too probable that the European community will separate itself more than ever from the people of the country, that the position of the Native civilians who may be appointed Justices of the Peace will be made extremely unpleasant for themselves in civil stations, that on the occasion of every trial (for some years at least) of a European British subject by a Native Magistrate in the mofussil, bad feelings will be excited, and that an attitude of sullen hostility to the Government of India will be maintained by non-official Europeans throughout the country.

5. While I wish to state emphatically my own belief that Native civilian Judges and Magistrates would be very unlikely to misuse their powers as Justices of the Peace, and that their sympathies would be more with the Europeans than with the Natives of their districts, I can well understand the

natural preference which Europeans charged with criminal offences must feel for courts over which their own countryman preside, and, considering the peculiar privileges enjoyed by certain classes of Natives—privileges which, in some respects, are calculated to defeat the ends of justice (e.g., it is impossible for a Judge to observe the demeanour of a *purda-nashin* witness, or to feel satisfied always of the identity of such witness), I submit that nothing short of administrative necessity should be made ground for withdrawing from European British subjects a privilege which they have shown in the most unmistakeable manner that they very highly cherish, and which is not productive of any injustice whatsoever. I beg, therefore, to submit my opinion that at the present time, and under present conditions, the principle of the Bill is not sound, and that infinitely more harm than good will be done by proceeding further with the Bill.

6. With regard to the latter part of the Government letter, I have no hesitation in stating that neither in this district, nor in any other district in which I have served, has any administrative inconvenience arisen from the exclusion of Native Covenanted Civilians from the power of trying European British subjects on criminal charges. In every Behar district there are always one or more Justices of the Peace besides the Magistrates of the district; and until the number of Native civilians becomes very much larger than it is at present, I do not see how any administrative inconvenience can possibly arise.

7. I have not thought it necessary to enter into any length arguments for or against the Bill, as everything that can be said on one side or the other has already appeared in the newspapers or in petitions, and I presume that it is my opinion, more than lengthy reasons, that is required.

I have, &c.
(Signed) C. F. WORSLEY.

LETTER from the SECRETARY to GOVERNMENT, Bengal, to SECRETARY to GOVERNMENT of INDIA, Legislative Department, (No. 614JD., dated May 15, 1883).

IN continuation of my letter, No. 591J.D., dated the 12th instant, I am directed to forward, for the information of the Government of India, copies of letters* from the Commissioners of the Dhaká and Patna Divisions reporting on the Bill to amend the Code of Criminal Procedure, 1882.

* From the Commissioner of Dhaká, No. 258 M., dated the 7th May, 1883.
From the Commissioner of Patna, No. 349G., dated the 6th May, 1883.

(Signed) F. B. PEACOCK.

Enclosures referred to in preceding Letter.

LETTER No. 258M. from the OFFICIATING COMMISSIONER of the DACCA DIVISION, to the SECRETARY to the GOVERNMENT of BENGAL, Judicial Department, dated Dacca, May 7, 1883.

WITH reference to your letter No. 1518J., dated 27th March last, regarding the amendment of the Code of Criminal Procedure, 1882, I have the honour to submit the following report for the information of his Honour the Lieutenant-Governor of Bengal, and to submit annexed extracts from the reports of certain officers whom I have consulted, and my notes thereon.

2. In my opinion the Bill as it stands steers an unfortunate *middle* course. It goes far enough to rouse the indignation of one powerful section of the community, while it does not go far enough to satisfy the cravings of another; and as such it must be condemned as impracticable and ineffective. To give half-a-dozen civilians powers to try Europeans will not remove any anomaly, or cause to cease any administrative inconvenience, for the reason that inconvenience is only likely to arise in cases which occur in sub-divisions (in sudder stations there must be generally one European officer with the

powers of a Justice of the Peace). This being the case, a Bill which does not invest all Sub-Divisional Officers with powers to try Europeans is simply a nullity. The Bill as it stands will certainly not remove from the Code, at once and completely, every judicial disqualification which is based merely on race distinctions. If such is to be carried out, very many officers not mentioned in the present Bill would have to have these powers conferred on them.

3. I see no objection on principle to Government being empowered to invest Native civilians—those entered in clause (a)—with the powers provided in the Bill, if it be granted that such officers have really attained the status of European gentlemen by their education, habits of life, and through general intercourse with Europeans; but it may not be good policy for Government to give such powers.

4. As regards the officers specified in clauses (b), (c), (d), in my opinion to confer on them such powers, and not to confer them on any of the many able and educated Deputy Magistrates and Sub-Divisional Officers of Lower Bengal—such men as Nawab Abdool Latif, Baboo Ram Sankar Sen, and others—would not only be invidious, but, doubtless unintentionally, yet distinctly, casting a slur on the latter officers, and be as great an anomaly as any that the Bill is supposed to do away with.

5. There are, out of the sudder stations, only two places in this Division where many Europeans reside, viz. Naraingunge and Goalundo, to which places only also steamers with European commanders ply. There are no indigo planters, and only one or two traders in country produce, who reside away from these two places and the sudder station. At Naraingunge there has been hitherto posted an European Magistrate, and till Mr. Badshah was posted, the same was the case at Goalundo also. There have not hitherto been any cases in which any administrative inconvenience has occurred in this division, nor does it appear to me that any are likely to occur, except perhaps at Goalundo. Hitherto the Europeans in this place charged with any offences have been content to waive their privileges and submit to be tried by Mr. Badshah (such cases have of course been petty ones). A case might perchance any day arise, in which the defendant might refuse to waive his privilege, and this might cause some inconvenience to parties, but not, in my opinion, to any very appreciable extent. Furreedpore is only 20 miles off, and the Magistrate might easily go out that distance, dispose of the case, and return within a day or two to his head-quarters.

6. Mr. R. C. Dutt, district officer of Backergunge, writes:—“As the extensive scheme of railway communication now in course of rapid execution is fully developed, there would hardly be a district in Lower Bengal where criminal cases implicating railway officials or European settlers would not sometimes occur. The number of Indian members of the service, of the rank of District Magistrate or District Judge, will be greater, and the districts available for them under the present law will be fewer. The difficulty which it is now proposed to pass over will have to be faced a few years hence, and perhaps the same remedy will have to be proposed, the same agitation would be excited, and the same bitter and painful feelings evoked.” It seems to him to “be far better, now that the question has arisen, that it should be finally set to rest, and it can only be finally solved in the way in which the Government of India has proposed to do it.”

7. Mr. Dutt goes on to say:—“It will not strengthen a district officer in keeping peace in his district, for which he is responsible, when he is told, and the people of his district are told, that he has no power over one privileged class of people; that he cannot punish and cannot deal with a disturbance if committed by that class, perhaps even in the bazar of the station in which he resides; and that for dealing with such cases he must have recourse to the authorities of a neighbouring district. It is not desirable that the people should be told that in districts administered by Native officers there is no redress against petty acts of violence by European offenders unless the complainants choose to seek such redress by submitting themselves and their witnesses to the hardship and inconvenience of travelling to a different district. Unfavourable opinions will be formed by the people of an officer in whom Government seems not to repose full confidence, and who is not empowered by Government to keep all classes of people in his

district equally in order. It is to be judged whether it is desirable to weaken the hands of a district officer who is held responsible by Government for the peace and criminal administration of his district. The real question was decided when it was decided that the Indian members of the Covenanted Service should be allowed to hold executive and judicial charge of districts. This was a generous and a bold concession, for with that concession the vast powers and responsibilities of ruling the people, which had hitherto been exclusively held by Englishmen, were generously shared by them with qualified Native gentlemen. Having admitted them to a share of those great powers and responsibilities, having called upon them to administer districts, collect revenue, extend education, and keep down crime, having required from them the same degree of efficiency and administrative vigour and wisdom as has hitherto been manifested by trained English administrators, it is no longer possible for Government to meddle with the powers which naturally belong to that position, and which are necessary for the responsible work which has to be done. Little distinctions, small curtailment of powers, petty disqualifications based on race or caste, are out of place, are virtually impossible, when it has been decided to entrust the administration of districts to the Natives of India. Legislation cannot halt where it is; it must proceed or move backwards. Shut out the natives of India from the great work of district administration, and the Amendment Bill now published may be abandoned. Make them District Magistrates and District Judges, and the powers which have hitherto been reposed in such officers, and which are necessary for efficient and successful administration, cannot be withheld. The question arose in 1872, *i.e.*, the year after the first Native of India entered the Bengal Civil Service, and it was postponed because a practical necessity for the change had not yet arisen, although men like Lord Mayo and his Commander-in-Chief, as well as Sir George Campbell and Sir Richard Temple, accepted and advocated the change, and saw that it was inevitable. The question has now arisen again in a practical form, as the same Native officers are now getting charge of districts; and the proposal can neither be abandoned nor be postponed with due regard to the interests of efficient administration.

8. "Previous to the enactment of the Criminal Procedure Code of 1872, a Native member of the Civil Service was not legally debarred, as such, from exercising jurisdiction over European British subjects. Under section 3, Act II. of 1869, any Covenanted Civil Servant could be appointed Justice of the Peace, and under sections 39-42, Act XXV. of 1861 (the old Criminal Procedure Code), any Justice of the Peace, being a first class Magistrate, had powers to try Europeans for certain petty offences, and to commit them for trial. It was by the so-called 'compromise' between Sir James Stephen and certain non-official Europeans that, by the Code of 1872, the Indian members of the Civil Service were legally disqualified to try or commit Europeans, and it was for the first time then enacted that no Magistrate or Sessions Judge should try a British-born subject, unless he was himself a British-born subject. It is well, therefore, to understand that, legally speaking, the right of which it is said the present Bill would deprive Europeans was created in 1872.

"This right of Europeans in India, as it has been called, is one which the large majority of Europeans in India, residing in Calcutta, Madras, and Bombay, do not enjoy, and do not feel the want of. The reason which has been assigned for still keeping intact this privilege in favour of a minority of Europeans residing in the mofussil is that public opinion is not as strong in the mofussil as in the Presidency towns, and an act of injustice may therefore be committed in some remote district without its exciting public attention. This argument, which was perhaps valid twenty years ago, is entirely fallacious in the present day. The present agitation against the Bill would in itself show how strong English public opinion is in the interior of the country. The agitation which took place when Mr. Meares was punished by the Magistrate of Jessore is another instance in point. He records his simple conviction when he states that the punishment of a European in the interior would be far more keenly criticised by the English public of India than a similar punishment in Calcutta, and would excite far greater indignation. He says he records his simple conviction when he

states that the liberties of Europeans are in this respect safer in the interior than they are in the Presidency towns. There is absolutely no reason, therefore, for perpetuating a personal privilege which has in the present day ceased to be necessary, which is not enjoyed by the large majority of Europeans in India, and which involves a serious administrative inconvenience.

9. "The principle on which the Bill is framed is that the power to try European offenders will be bestowed according to personal fitness, and not according to the nationality of Magistrate and the Judge. It does not remove any of the existing distinctions between Native offenders and European offenders. It only removes all distinctions between European and Native Judges. The object of the Bill is not to remove or alter any of the numerous and special provisions which now exist to guard the liberties of Englishmen in the mofussil. Under these special provisions, Englishmen have the benefit of the Habeas Corpus Act (embodied in the Civil Procedure Code), which the Natives of India do not enjoy. They have the right of appeal in every case, which Natives do not have. The District Magistrate and Sessions Judge have a far more limited power of punishment with regard to them than with regard to Natives, while the humbler and less able class of Deputy Magistrates, who mainly administer justice among Natives, have (unless they are Europeans and Justices of the Peace) no jurisdiction over Europeans. The proposed Bill respects all those provisions, but enacts that, with those special provisions in his favour, the European will be triable by Native and European Judges alike. Indeed in one respect it adds to the privileges of Englishmen. English Deputy Magistrates who are Justices of the Peace try English offenders under the present law as stated above, but they will not be allowed to try them after the present Bill is passed. A higher class of officers, *i.e.*, the covenanted officers alone, will be empowered to try Europeans; but among such officers there will be no distinction made on the ground of nationality. Thus the Bill involves three principles: In the *first* place, it respects all the existing special provisions to guard the liberties of European subjects; *secondly*, it requires a high degree of fitness in the officers (higher than under the present law) competent to try such subjects; *thirdly*, it does not require that such highly-qualified officers must necessarily be Englishmen.

10. "The only question on which, as it appears to me, there is room for difference of opinion, relates to the extent to which legislation should be carried in the direction indicated. Should district officers and Judges only be empowered to try Europeans, or should covenanted assistants be empowered to do so under special circumstances? Should the power be confined to the officers selected by competition in England, or should it also be extended to those in this country under the Statute? As in heavy districts the district officer scarcely does any judicial work, it would be better perhaps to have a provision for empowering specially selected covenanted assistants to try Europeans. With regard to the officers selected under the Statute, it is not apparent how the power to try Europeans can be very well withheld from them if they prove themselves fit by their work to have judicial or executive charge of districts."

11. As to the administrative inconvenience which has arisen, Mr. Dutt remarks that great inconvenience might have occurred when he was in charge of the Balasore district, to which no European officer was at the time posted. If any European had then been charged with an offence, he would have had to have been sent either to Cuttack, a distance of 100 miles, or to Midnapore, still further off, but I do not understand Mr. Dutt to say that any such case did actually occur.

12. Mr. Waller, the Magistrate of Mymensingh, writes as follows:—

"The principle of the Bill seems based on the assumption that the only logical criterion of the propriety of conferring the proposed jurisdiction on certain Native Magistrates to try Europeans is that of their competency to discharge high judicial duties, and that this being admitted, the propriety of conferring the proposed jurisdiction follows of course. It is also apparently taken for granted that all judicial disqualifications based merely upon race distinctions in this country at the present time are indefensible.

"Besides this mere question of moral and intellectual competency, there are other elements to be taken into account in considering the policy of the measure proposed in the Bill.

"In the administration of criminal justice it is an admitted axiom that it should be so conducted as to secure the sympathy and support of all good and orderly citizens. Now the exercise of a criminal jurisdiction over Europeans at present in this country, even by the select Native Magistrates whom it is proposed to empower by this Bill, would not only not meet with the sympathy or support of the orderly and law-abiding European population of this country, but would inevitably range on the side of the European accused person the sympathy of the otherwise law-abiding Europeans in the country, and that no matter how defensible, from the point of view of the judicial and intellectual competency of the Native Magistrate, his exercise of the proposed jurisdiction in any given case might be.

"This, however, it may be replied, is merely the outcome of an unreasoning and unjustifiable race antipathy which no Government can be called upon to recognise or to allow to influence it in considering the adoption of measures of reform demanded both by abstract justice and good policy.

"13. An Englishman's desire to be tried, where life or liberty are concerned, by his fellow-countryman, is owing in a great measure to the fact that the Englishman knows that, though there may be exceptions in the great majority of cases, the English Judge who will have to try him will be a man who he knows has been brought up in certain well-defined principles, regulating in the most powerful and effective way his ideas of his duty to God and his neighbour, and that it is this code of the most exalted morality by which, in the discharge of any serious and trying duty, he (the Judge) will be more or less strongly influenced. But what do the majority of Englishmen know of the principles which guide, or the code of moral obligations that is binding on the Native Magistrate? And having no knowledge of this, how can they be expected to place the same confidence in him as in an Englishman as their Judge?

"14. "Again, in criminal trials especially, it is the clear right of every subject to have the best and fairest trial, both as regards the agency and procedure available, that the Government can afford to provide. Now in coming to a decision on evidence in trials, a very considerable amount of the premises on which inferences are based are axioms laid down by the Judge out of his own experience of the conduct, feelings, motives, habits, &c. in every-day life of those whom he has seen or known.

"15. "This being so, it cannot be held that a Native of India, by living three or four years in Europe, from the age of, say, 16 or 17 to 20 or 21, alone in a foreign country, and his entire time engaged in study for examinations, and without facilities for mixing in society, can in that short time get a sufficient knowledge of the inner, or even of the outer, life of Englishmen, to enable him, on his return to India, to form, in a criminal trial of an Englishman, those inferences, above mentioned as based on experience, equally correctly with an Englishman born and bred among his own countrymen, and therefore intimately acquainted with their social habits, religious and other feelings and ideas. He ventures to say that not even a Frenchman or a German, though of races much more nearly allied to the English in customs and feelings than any Native of India, could be found who, even after years of intimacy with English life in England, would be regarded by Englishmen at home as, from this point of view, equally fitted with themselves to sit in judgment on Englishmen; and this would, he is convinced, hold good *vice versa* of any other civilised nation: for instance, a German or an Italian would be dissatisfied to have for his Judge in a criminal trial one of another European nationality, and that even though the foreigner might understand his language well and be quite competent in that respect; and in this connexion one cannot fail to remember that the other nationalities of Europe have not allowed the Turkish Government to exercise jurisdiction over their subjects on Turkish soil;" while, as an illustrative phenomenon, he mentions the not unfrequent outcries in the English Press, caused by the exercise over Englishmen of the criminal jurisdiction of other European nations of those countries.

16. Mr. Waller assumes that he has shown that, for the reasons stated, an Englishman could not be said to have been given the best trial as regards agency which the Government could give him, if he were made over for trial in a criminal case to a Native of India who had resided in England for some four or five years as above described, and who, for the reasons stated, was not equally qualified with an Englishman, by every-day experience of English men and women of the middle and lower classes, to decide in the trial whether he might (in the words of section 164 of the Evidence Act) presume the existence of any fact as likely to have happened, regard being had to the common course of human conduct in its relation to the facts of the particular case.

The deduction therefore resulting is that the Government is bound in criminal trials to give Englishmen, where it is possible, an Englishman to try them, as being undeniably more qualified by knowledge of "the common course of human conduct" among Englishmen, than those Native civilians on whom it is proposed to confer jurisdiction to try European British subjects in the mofussil.

17. As regards the class of officers coming under clauses (b), (c), and (d), Mr. Waller remarks :—

"As to those Native Magistrates who have never been to England, and whose acquaintance with Englishmen and their ideas and habits are derived from the slight amount of intercourse they may have had with them in this country, of course the argument just formulated applies very much more strongly to show that Government would not be doing its duty towards Englishmen in providing the best agency, if it were to make them over to these magistrates for trial in criminal cases.

"This incapacity of inexperience throws no slur on the moral or intellectual capacity of the Native Magistrate, and to make the former necessarily connected with the latter quality is entirely illogical and untrue.

"These gentlemen may be qualified to hold posts of high position and trust as executive or judicial officers, their moral and intellectual capacity may equal that of the most upright and able Englishmen, and yet the disqualification above indicated must exist. Unless, therefore, it be shown that Government cannot provide English Judges for Englishmen in the mofussil, or cannot do so without causing serious administrative inconvenience, it is not a good policy to make law the measure proposed in the Bill."

18. Mr. Badshah, Assistant Magistrate of Goalundo, writes as follows :—

"Under the present law administrative inconvenience is felt. I have been in charge of the Goalundo Subdivision for nearly two years, but I have not the powers of a Justice of the Peace. Being stationed at an important railway terminus, European British-born subjects are often brought up before me. Unless they choose to waive their privilege, they must be sent on to Furreedpore. This would cause serious inconvenience to them on account of the want of proper accommodation. The European vagrant is found everywhere; and unless the law on this subject is amended, such people may terrorise to their heart's content over the people of the district, where the magistrate and collector is a Native. Besides this practical inconvenience, there is the complaint made by some of the Native civilians that, on account of the anomalous character of the law, Government will doom them to serve in unhealthy places."

19. Mr. Badshah, however, goes on to say: "The cases against Europeans in the mofussil are generally difficult to try. They require, on the part of the judicial officer, force of character, sound judgment, tact, and discrimination. It is difficult for Natives to enter into the ways and ideas of an European, to understand his feelings, his prejudices, and, if he is a non-official, his sublime ignorance of the Native character and habits. Consequently it will be generally a difficult task for a Native Magistrate to distinguish between the different shades of an offence committed by an European."

20. On the whole, Mr. Badshah thinks "that, in the interests of justice, the Bill should be withdrawn for some years at least. Nothing can be more pernicious—nothing more detrimental to the welfare of society—than to compel men to be tried by Judges whom the former will not trust. It

will not only be rash, but disastrous to public policy to invest the latter with new powers. It will be rash because an experiment will be tried against the wishes of those who are most interested in the Bill, whose co-operation will be required to make it useful, and who will throw difficulties in the way of its success. It will be disastrous, because there will be a constant cavilling at the justice of the Native Judge. Every decision of his will be scrutinized, every judgment that he will pass will be ridiculed, every sentence that he will pronounce will be considered too harsh. Every newspaper correspondent will rush into print with his exaggerated tale of the horrors inflicted on the European British subject, and in passionate language will call upon the whole European community to rise in indignation against the Native Magistrate. The Native papers will retaliate in the same violent manner. The sore will be kept open, justice will be degraded. What possible respect can men have for their Judges and their judgments if the former are lampooned and the latter despised?

21. "The tendency of the lower class of Natives is to think that sahibs are unjustly favoured when they are acquitted on good grounds. The impartiality of the Native Magistrate will be impeached by the Europeans, if in any case an European British subject is punished; it will be impeached by the Natives if he is let off. To equalise rights, to remove the irritation and friction which attend their inequality, is certainly high and noble policy. But if the privileges of a class are infinitesimal, if they injure no person and irritate a very small body of men, if their removal is associated with the degradation of justice, and tends to bring Judges into contempt, it is still higher policy to let alone the privileges, so that the sacred name of justice may not be sullied, nor Judges become the targets for universal ridicule and abuse. It has been the aim and object of every civilised nation to secure their Judges from attacks on their impartiality. I cannot suppose that the present Government of India, if they were informed of all the facts, would depart from the declared policy of the civilised world."

22. Baboo Okhoy Coomar Sen, my personal Assistant, thinks that "there can be no doubt as to the soundness of the principle of the Bill. As Government is now administered in this country, the people, rightly or wrongly, look upon the District Magistrate as the representative of the executive power of Government in the district. He is the Chief Magistrate, and is responsible for the preservation of peace and order in his district. To this end he is vested with powers to try on criminal charges all classes of the people in his district, of whatever creed or nationality, and it seems to me that in the interests of good government, he should continue to exercise such powers. A District Magistrate without such powers would be an anomaly. Not only would the classes lying beyond the pale of his jurisdiction, but even those within it would naturally look down upon him; the former would consider themselves above his authority, and the latter would distrust him as one not in the confidence of Government, and not able to protect them from certain privileged classes." His position would be lowered in the eyes of both, and Baboo Okhoy Coomar Sen is afraid that, with half powers, a Native Magistrate would find it difficult to keep the peace in any district in which there might happen to be a number of Europeans of the lower orders. For these reasons, he ventures to think that the District Magistrate must, as now, have criminal jurisdiction over his European fellow subjects, and that if an Indian civilian be not fit to be entrusted with such jurisdiction, he should not be appointed to that high and responsible post at all.

23. By parity of reasoning, the Sessions Judge, of whatever creed or nationality, should have the same jurisdiction; one not fit to be entrusted with such powers should not be placed in that high position at all.

24. As to whether Local Governments should be empowered to appoint any covenanted civilian or any member of the Native Civil Service, constituted under the Statute 33 Victoria, cap. 3, he believes it is only fair to the wise and experienced heads of Local Governments that they should have such powers, which they are sure to exercise with great caution and judgment. They are responsible for the good government of the country entrusted to them, and should have all the necessary powers to that end. A member of

the Native Civil Service would probably be made a Justice of the Peace only when a covenanted European civilian was not available, or when he had, by especially meritorious services, gained the confidence of the Local Government.

25. With regard to the question whether any administrative inconvenience arises, or is likely to arise, in the future from the exclusion of the Native covenanted civilians from the power of trying European British subjects on criminal charges, he states that, to his knowledge, no case of inconvenience has yet arisen in this division, or indeed in any district in which he has served; but he apprehends that, as more and more Native gentlemen are appointed to high posts in the mofussil, such are not unlikely to occur in the future.

26. Mr. Paul, the Magistrate of Dacca, writes as follows:—

“I object to the Bill as being unnecessary and uncalled for on the grounds of administrative inconvenience, as calculated to widen the breach between Natives and Europeans (non-officials), and as wanting in finality.

“I further object to it as depriving Englishmen of their most cherished right of being tried by their peers, by men who can feel for them and can understand them, and as exposing them, in isolated and distant spots particularly, to the danger of ruin through conspiracy and false charges.

27. “The Magistrate of a district, as a general matter of fact, seldom, if ever, tries a criminal case, consequently any possible difficulty that can be anticipated could be easily met by the appointment in such cases of an European Joint-Magistrate, who might well be chosen from the judicial branch, so as to leave no possibility of insinuation of rivalry between Magistrate and Joint.

“Besides this, owing to the increased and increasing facilities for communication, more particularly in those districts into which European enterprise has chiefly penetrated, there would, in case of necessity, be no difficulty in sending a special officer, such as is often done for Natives themselves, *vile*, for example, the great Tikkari case.

“The present Bill would be more likely to cause inconvenience through disqualifying European Deputy Magistrates, as so forcibly pointed out by the Honourable Mr. Thomas, while, if this error has to be corrected, we again open the door to further agitation to invest all classes, covenanted and uncovenanted alike, with jurisdiction over Europeans.

“That the proposed change is likely to widen the breach between Europeans and Natives is obvious from the agitation that is setting in on both sides, and the violent accusations brought by each. From my own long experience in dealing with tea planters, and also indigo planters, I greatly fear the consequences that may ensue from setting a Native in judgment over such persons. Whether rightly or wrongly it matters not, but the fact remains that Europeans in this country do not trust in the impartial administration of justice by Natives (that even Natives have no implicit faith in their Native courts is curiously illustrated at this present moment in this very district, where I have received quite recently affidavits accusing no less than three of my senior Native deputies of partiality, and begging for transfer of cases from their file); and unless there is trust, administration cannot proceed smoothly. A slight error or excess in exercising these powers by a Native Magistrate (and such mistakes are inevitable even with the best) might lead to open violence and resistance, the consequences of which would be most deplorable, and the final effect of which cannot easily be foreseen.”

28. “If in the Bill it had been proposed to confer these powers on Native civilians alone [class (a)], I could have understood the arguments adduced in favour thereof, and would not so vehemently have opposed the measure, but have contented myself with merely pointing out that, for the sake of the sentiments of so very few, it were impolitic and unnecessary to raise such a dangerous and burning question. I would at once have acknowledged that these few Anglicised civilians, isolated from the bulk of their countrymen, would be more than ordinarily careful not to let race prejudice or race connexions carry them away, while, added to this, their long sojourn in England must have given them some insight into European ways, and opened their eyes to the motives and principles that underlie English social life and customs. I would have admitted that there was some logic in arguing that

men who, though of different race, creed, and clime, have gone through the same educational course, have passed the same educational tests, and have, to a certain extent, foregathered with their European comrades, are capable of exercising the same powers, and bearing the same responsibilities, as their European colleagues. But such reasoning cannot be applied to the other classes this Bill proposes to include. If these latter are judged fit to try Europeans, under what disqualification does an old, experienced, and tried Deputy Magistrate labour as regards any distinction between them? Both are Government nominees; in neither class is there any provision that they shall have had an European education, and, as a fact, there is nothing to prevent an uncovenanted deputy, with interest, from being promoted into the ranks of the covenanted, on whom this Bill proposes to confer exceptional powers. It follows that if this Bill is passed, Government will not be able to stop at the covenanted services, but will be carried on to sweep away what little privileges and safeguards the European retains."

29. Mr. Sharp, Magistrate of Furreedpore, was also asked for his opinion, but he has not up to date sent it to me; and as an urgent telegram asking for the submission of the report has to-day been received from Government, I cannot delay the report to admit of his opinion being considered.

I have, &c.
(Signed) U. S. ALEXANDER.

LETTER, No. 349G, from the COMMISSIONER of the PATNA DIVISION to the SECRETARY to the GOVERNMENT of BENGAL, Judicial Department (dated Bankipore, the 6th May 1883).

WITH reference to your letter No. 1518J, dated 27th March last, on the subject of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to submit the following, after consultation with the district officers of my division, and the subordinate officers, European and Native. I have also had the advantage of receiving the opinions of several European and Native non-official gentlemen who have been consulted by the district officers.

2. With some few exceptions on the side of the Native officers, opinions vary with their nationality, the Native being in favour of the Bill, and the Englishman against it. As might be anticipated from the public discussion that has ensued on the introduction of the proposed measure, this is a fair representation of the general division of sentiment on the subject, all Europeans being violently opposed to the change, and almost all Natives here giving to it what is in fact a languid support. From the Magistrate of Patna I learn that the gentlemen consulted, official and non-official, Europeans and Natives, are, to a man, unanimous in considering the Bill unnecessary, and (with one exception) in condemning it. My own personal inquiries show me that Patna Native opinion is quite indifferent on the matter.

3. An expression of opinion has been asked for on the three points—

I. The principle of the Bill.

II. The administrative inconvenience at present arising from the exclusion of Native covenanted civilians from the power of trying European British subjects.

III. Such administrative inconvenience being likely to arise in the future.

4. Taking the principle of the Bill, I would urge with all earnestness that neither in the Statement of Objects and Reasons, nor in the draft of the Bill, nor in the arguments adduced in the discussion of the Bill on its introduction by its advocates, has any consistency of principle been successfully demonstrated.

It has been aptly pointed out to me by the Magistrate of Durbhunga that both advocates and opponents of the Bill call its principle abolition of distinction between Natives and Englishmen. Opponents, in fear call it the thin end of the wedge: advocates, in hope, called it an instalment of justice. In

the discussions in Council, the Bill was said to have no principle; it was not the thin end of the wedge nor an instalment of justice. It had no tendencies nor object beyond itself; it was merely a Bill to equalise Native civilians' powers inside and out of Calcutta. The introducer of the Bill stated it had a principle—to remove from the Code judicial disqualification arising from race. In the words of the Statement of Objects and Reasons, “to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, *at once and completely, every* judicial disqualification which is based merely upon race.” Now, in legislation, it is simply impossible, with the smallest degree of honesty, to promise finality, and in this Bill such a promise as that insinuated in the Statement of Objects and Reasons is not supported by its conditions, for anyone who approves of the provisions cannot fail to see much more of the same kind at hand to be done.

The Magistrate of Shahabad rightly draws attention to the fact that the Bill itself cannot be said to accomplish the object set forth, and indeed it merely makes a pretence of attempting to deal with a part of the subject. It leaves untouched the right of the Englishman to be tried in all serious cases by a jury the majority of whom must consist of his countrymen. Thus race is still to be a judicial disqualification for deciding on the innocence or guilt of an European British subject. The other judicial privileges of Englishmen are left intact by the Bill,—as the right to be tried by a court of higher grade than that which deals with the offences of Natives, and the right of appeal in every case. As Mr. Nolan has remarked, “the law, as it will stand when modified by the Bill, will still bristle with race distinctions,” so that the whole position of a Native with regard to criminal courts will remain, as it now is, inferior to that of the Englishmen. The Bill declares Natives to be capable of exercising jurisdiction over Europeans, but it provides that they must be Natives of certain services, selected merely because they contain very few Natives.

The bulk of the Native magistracy is in the Uncovenanted Service, but this is carefully excluded from the field out of which the executive Government may select the future Justices of the Peace; and why? Because it is Native, and for no other reason. Cantonment Magistrates, Statutory Civilians, and members of the Non-Regulation Commission, have not, as a body, a better education than the Deputy Magistrates, and their legal training is very inferior to that of the senior members of the services to which the latter belong. Clearly, then, it is not on account of superior intelligence or judicial ability that they are selected, while the men bearing high university degrees—some of the members, or former members, of the Bengal Legislative Council, who form the first rank of the Uncovenanted Service—are excluded.

The only reason which can be assigned for the distinction is that of race. At present Cantonment Magistrates and members of the Non-Regulation Commission are Europeans, while Statutory Civilians have been affiliated to an European service. Thus, even in the selection of Judges and Justices of the Peace, the one point with which the Bill professes to deal—the object of abolishing race distinction—race distinctions regulate the Bill. Concurring with the Magistrate of Shahabad, I am of opinion that it is an egregious mistake to raise this most invidious question, if it is not to be settled. The Bill, far from effecting such a settlement, would only shift the superstructure of European privilege to a new and hollow basis. Whether there is a justifiable need for such a settlement of the question, I shall remark upon further on.

5. Again, it has been explained by the introducer of the Bill that European cases are difficult, and therefore should be reserved for the higher courts. My own experience, and that of all my officers, confirms the well-known acceptance that the majority of European cases are exceptionally easy; but if they were difficult, this would not of itself induce the legislature to reserve them for the higher courts, and the courts for which they are to be reserved, as those of Cantonment Magistrates are not higher. The most difficult classes of cases are perjury, libel, concealment of birth, adultery, wounding religious feelings; and these offences are triable by Deputy Magistrates who, under the Bill, would be excluded from being allowed to decide, on his own confession

that a European soldier was drunk and disorderly. The anomaly is striking on the face of it, and the position assumed by the Bill cannot be defended. If it cannot be defended, the position cannot be long maintained; and I fully agree with my district officers in thinking that such indefensible ground is to be occupied, we may look forward to a long period of agitation, such as that through which we are now passing. It is manifestly impossible that the Bill, if passed, can be maintained without giving rise to propositions for various further amendments, embodying the real principle sought, viz., abolition of distinction between Englishmen and Natives. Indeed, I observe now from the public prints that, from the Native partisans of the proposed measure, a further pressure of the thin end of the wedge has been already applied, by the suggestion of an amendment to the present Bill, with reference to the disqualification therein of all uncovenanted Europeans, other than such as may be Assistant Commissioners or Cantonment Magistrates; that jurisdiction over European British subjects should be given to all Deputy Magistrates, whether European or Native, with first class powers.

6. I heartily agree with my most experienced district officers, and I would press the opinions upon the Government for the most serious consideration, that the proposals embodied in the Bill are politically disastrous, and calculated, both from an economical and social point of view, to work irremediable mischief. The ultimate object which must be of a certainty pressed upon us in all consistency, should the present Bill be passed, is the principle, as I have said above, of total abolition of distinction between Englishmen and Natives, and this principle cannot be followed without destruction to the Empire.

7. In dealing with this part of the subject, I beg to submit the views of Mr. Boxwell, the Magistrate of Durbhunga, with which I concur entirely. He points out that at the outset we must discriminate between this principle of the abolition of the distinction between Englishmen and Natives, and another principle with which a Bombay advocate for the Bill has confounded it. He supports the Bill because he approves of the association of Natives in the administration. These two principles seem to be exactly the right and the wrong lines of direction. The Indian Empire is a military despotism, tempered by liberal ideas from England. Popular government of the Empire is impossible, and the idea is absurd; stated nakedly, no one entertains it, but some men, in their treatment of certain questions, seem to postulate it. The continent of Europe will have a popular government ages before the continent of India. The government of the Empire is not Bengali nor Hindustani, nor composite, but British. The Empire is held together solely by British supremacy, and a declaration of equality between the British and the Natives would be nonsense. The army furnishes the clearest and simplest illustrations. The army in India is the backbone of the Government, and what would be the fate of any proposal to equalise Englishmen and Natives in military matters? To equalise commands or arms, as by distribution of forts or artillery? The fact is that as long as, and because, we have the British Army at our back, almost any experiment in mixed administration may be tried.

The mischief is that in peace this foundation of the British rule is dropped out of sight, and wild things are said by Native lawyers and orators about equality. What is the meaning of abolishing little distinctions, and doing away with little anomalies, while we keep 70,000 British soldiers holding the Empire, and paid by it for doing so? The fundamental principle of the British Empire in India is race distinction between the British who hold it and the nations who constitute it.

8. But the whole question in this phase has been so thoroughly advocated and discussed in the public prints, that I hesitate to add to the discussion. It has been most truly represented in a recent paper I have seen, containing arguments against the measure, that if the principle embodied therein is supported by arguments based on the so-called anomalous character of the present law, all such anomalies, if such they be, must remain as inseparable constituents of the paramount anomaly of all, namely, the existence, in fact, of the supremacy of British rule in India. In the face of this anomaly, there is no special or unreasonable anomaly in the existence of the right which the proposed measure seeks to take away.

It is not difficult to understand that the other principle mentioned above, viz., association of natives in the administration, is of almost equal rank, and practically as important. We must make all possible use of the natives, both for the sake of the work they can do, and for the sake of giving them work. The more numerous, lucrative, and honourable careers are open to them, the better for every one, and for the Empire. But acts done on this right principle are by thoughtless people supposed to be done on the other wrong and impossible principle. Mr. Boxwell forcibly puts it in this way: a Bengali might liken Baboo Kristo Dass Pal to Mr. Bright; but Mr. Bright sat in Parliament because *the people* sent him there, and in the Ministry, because Parliament sent him and his party to govern; Whereas the Baboo sits in the Vice-regal Council because the Viceroy chooses to listen to his advice and take it or not, as he pleases. I would note that the introducer of the Bill speaks of a *disqualification*; but the word is unmeaning in this place. It pre-supposes something of a *claim* or *right* to office and equality, but nothing of the kind exists, or can exist. There is no right, inherent or conferred, in the appointment of a native to the Civil Service, which has been wrongfully invaded. The so-called disqualification is not a disqualification of the Judge, but a privilege of the European, which he claims as a long inherent right; and as it has been very aptly stated in the general public discussion of the measure, it would be as reasonable to speak of the privilege of Europeans to demand a jury composed of one-half or more of Europeans, as a *disqualification* of native jurors.

10. One of the arguments put forward in earnest in support of the Bill is that it involves loss of dignity to a native civilian to be barred from trying any class of subjects of the Empire. The argument really deserves no consideration. The desire of a Native civilian to be able to try an Englishman is no more commendable than would be in an English Magistrate to see a privileged Rajah in his witness-box in court. It would be much more reasonable to withdraw from a Rajah the privilege conferred, and always held so dear by him, of exemption from appearance in court, than to withdraw the privilege from Europeans, which the present Bill would do.

11. I am reminded by the Magistrate of Chumparun, Mr. Henry, that it is not contended in favour of the proposed amendment of the law that there has been any practical failure of justice since the passing of Act X. of 1872, owing to the non-concession to certain Native officers of criminal jurisdiction over European British subjects. As there has been no practical failure of justice, it becomes necessary to consider who are the persons that will gain relief by the proposed alteration of the law, and what title they have to claim this relief.

From all that has passed, and has been written, regarding this measure for the last two months, it may be assumed that the application for relief is not the outcome of national sentiment, nor does the demand for it emanate from the people, or from any considerable number of the people. It comes from a very small section of the community in Bengal, and a still smaller in Behar, who are totally unable to show on what grounds they claim relief, except upon the general and not intelligible ground that there is an anomaly to be removed, and that the proposed measure, if passed into law, would make the Criminal Code more symmetrical from a lawyer's point of view. While the Bill, then, confers no benefit on any class of people (unless the attempt to meet the wishes of a few Native officials be considered a benefit), it causes the greatest pain, consternation, and exasperation to the whole European community, and will end by alienating them altogether, without conciliating the natives.

Notwithstanding the remarks which have been made in Council as to the position which the Government should assume in this question, to meet the so-called attempt of the European community to *force* the resignation of their Bill, it seems to me that the attitude, feelings, and representations of such community, pressed with such honesty of purpose, is not a matter to be lightly treated, but is one requiring the gravest consideration. It would, I think, be folly to blind one's self to the obvious fact that those opposed to the Bill, that is, the Europeans, have the power to embarrass the Government in India, though the wish to do so may be, and no doubt is, very remote;

but while the agitation continues, it will do harm, even more than has already admittedly arisen.

12. I think it right to submit to Government the following opinion received from an English gentleman, a barrister of Patna, having a large experience of the natives, as showing what native opinion among the people has arrived at, with those who have given the matter any consideration. It may be urged that this sort of opinion is only the outcome of native ignorance, and is worthless; but under the peculiar conditions of our rule in India, I am not at all prepared to admit that such expressions of opinion on the action of the Government can, with any wisdom, be totally disregarded. The following is an extract of the remarks above-mentioned:—"Again, the Bill is nothing more or less than a concession to the clamour of natives. But a concession is never regarded as a grant by a semi-civilised man, but a *surrender* or a *retreat*, and so the present Bill is regarded in that light already. The idea prevailing in the bazaars is that the Raj of the *Angriz* is gone, that is, the Sirkar, an undefined and unseen power, has taken from the *Angriz* a privilege which gave them power over the Hindus, and consequently now they are all equal. The bad effects of such an idea prevailing amongst the general populace can be conceived, and I apprehend that the passing of the Bill will but strengthen and confirm the erroneous impressions of the people, and will tend to render administration more difficult, and will jeopardise the safety of isolated Europeans."

13. Taking the case from the side of the accused Englishman, there is something more to be said than the argument about his right to be tried by his peers, in which, I am bound to say, I am inclined to think a good deal of nonsense has been talked. On the question of the general qualifications or the individual merit of selected native officers for exercising the jurisdiction proposed by the Bill, I do not wish to touch. Though several of my officers have dwelt on this point, it seems to me a secondary consideration, for it matters little whether the native civilian be, from his birth, education, and habits of thought qualified or not qualified for the purpose intended, if it be once conceded that the real principle of the Bill is to be adopted, in that the total abolition of distinction between Englishmen and natives is accepted, and the long inherent privilege of the Englishman is swept away.

14. There is, I think, much to be considered in the argument put before me, that, on the whole, it is difficult to conceive any but an Englishman could properly restrain and keep in order a violent and lawless Englishman. Our estimate and the native estimate of crimes of violence and chicanery are different. Mr. Boxwell, the Magistrate of Durbhunga, has rightly put it in saying that we are determined that our views shall prevail. We are strong enough to keep our countrymen in check, and determined not to let the natives reply by false accusations, and we assert that the natives are not strong enough to do this. Therefore we say, for the good and for the safety of both natives and Englishmen, leave accused Englishmen to be dealt with by Englishmen. The motive of the Bill, as set forth by the introducer, looks like an inversion of reason. As Mr. Boxwell expresses it, "there is a big thing of wide-reaching importance—justice between Englishmen and natives; and there is a little thing of no importance—the fancy of a judge for an increase of dignity. The Bill proposes to let the little frivolity determine the great matter of justice."

15. In concluding upon this portion of the subject, I cannot do better than submit the following remarks in quotation from the views submitted by the Magistrate of Durbhunga. He says—"The coincidence of the Bill for local self-government throws light on the question. The title of that Bill is a misnomer, and for this reason the scheme has a chance of success. The Government hands over for administration by local bodies certain departments of work, with responsibilities and funds. These departments are no more Government than a railway company or a school or a ship is Government. But the title of the Bill—Local Self-Government—and the reasons for the present Bill—removal of disabilities or disqualifications, together with the license permitted to both English and Native newspapers,

“ and the mildness of the despotism generally—all unite to create a false
 “ idea that the Government of the Indian Empire is something other than a
 “ British despotism. I think the only very bad thing about the Bill is its
 “ principle. If it had been introduced as an administrative necessity, and
 “ anything like a necessity had been shown for it, then it would have been
 “ taken like other disagreeable necessities. But as it is plain that the British
 “ Empire, containing many natives of almost every degree of civilization,
 “ from savages upwards, counting its languages by scores and its subjects by
 “ hundreds of millions, must be governed as a despotism, it seems absurd to
 “ base administrative reform on any principle of equality or of abolition of
 “ disqualification or other outcome of the growth of popular Government.”

“ It is certain that the issues here raised are real and not imaginary. The
 men who want the Bill are a few English-trained natives of Bengal and
 Behar; and they want it, not for any improvement in justice, but as an
 admission of a claim to equality. I say the claim to equality cannot be
 listened to, even to reject. It is irrelevant to every question. Englishmen
 do not claim individual superiority. We are the subjects of the despotism as
 much as our native comrades. The Government takes all the advice it thinks
 needful, and appoints each man to his appropriate work. This notion of
 equality has been picked up from English books. Bengalis grant no equality
 to Sonthals, Hindustanis grant none to Bengalis, Brahmins grant none to
 other castes. Nor does any one think about such a thing, except a few
 English-dressed natives who grasp a small part of an idea.”

16. Taking the second and third heads of the question, as to the adminis-
 trative inconvenience at present and in the future, I concur in the unanimous
 opinion of all the officers of the Division, that no inconvenience exists or is
 likely to exist. I am of opinion that the administrative difficulties anticipated
 are altogether visionary, and I assert this with the full experience of the
 administration of a division having a particularly large community of
 European residents, the number of which has been recently computed at some
 2,300. I would call attention to the fact—a significant one—that the Bill
 itself, and I refer particularly to the statement of objects and reasons, makes
 no mention of “ administrative inconveniences.”

It seems *now* to be put forward by the supporters of the measure. I have
 before me the opinion of another English barrister of Patna, who emphatically
 adds his testimony to those who are against the change contemplated, after
 more than eight years' residence in the mofussil, where he has, during the
 whole period, practised uninterruptedly in his profession in the province of
 Behar. This gentleman has stated that in his experience, since the promotion
 of the Indigo Planters' Association, the number of criminal charges brought
 against planters are few, that the most serious ones are found false, that no
 case has been found so serious as to necessitate a trial before the local sessions
 court.

Other classes affected by the contemplated change would be zemindars,
 European managers of native estates, railway employés, including contractors
 on railway works, merchants, and shopkeepers. At present no inconvenience
 in the administration of justice is felt in dealing with any of the classes
 mentioned. Taking the district of Chumparun as a typical district, where
 there is a large European population, and where some idea of the value of the
 capital sunk in one industry alone, over which the Europeans have control,
 may be formed from the fact that the Chumparun indigo sold during the
 season of 1881-82 realized over 55 lakhs of rupees, the figures of European
 crime for the last five years show 19 cases. The Magistrate has reported
 to me that in seven of these cases the complaint was either rejected or the
 defendant discharged. Six of the remaining 12 cases were cases of assault
 or causing hurt; three more cases came under section 506, Indian Penal
 Code (criminal intimidation), and were compromised out of court. There
 was one case of criminal trespass (compromised), one case of wrongful
 confinement, and one case of wrongful restraint. Thus, during a period of
 five years, 19 complaints were preferred against Europeans.

Seven of these cases, on inquiry, were found to be groundless, and of the
 remaining 12, 11 were petty offences against the person, with one case of
 criminal trespass. Had there been no European judicial officers in the

district, no appreciable inconvenience could have been experienced, even if, during the course of five years, it had been necessary to bring in officers from neighbouring districts to deal with, on the average, something less than four cases during a year. It appears, moreover, that during the years 1878, 1879, and 1880, there were in all only five cases, one of which was dismissed, and three of which were simultaneously instituted against one accused, and compromised out of court. It may be asserted, therefore, that so far as the experience of the last five years can guide us, the state of European crime in the district has been such that no possible inconvenience could have been experienced in dealing with it, if the whole district judiciary had laboured under the disability of not being able to try European British subjects.

17. Turning to the list of the Covenanted Civil Service, I find that since 1870, namely, during the last 13 years, there have been appointed to the Covenanted Civil Service in Lower Bengal, by open competition in England and by appointment without competition in India, 13 gentlemen who are not European British subjects. Thus, the entrances into the Service have been at the rate of one a year. This, moreover, is the average that will probably be maintained for some time to come, as the average number of appointments has not exceeded eight a year, and the proportion of natives of India is not to exceed one-sixth of the total number. Experience has shown that Covenanted Civilians in these provinces rarely begin to act for short periods as Magistrate-Collector or Judges before 10 to 12 years, while it takes much longer to attain the substantive rank of either Magistrate-Collector or Judge. Thus, during the next 10 years not more than 13 native Covenanted Civilians will have to be provided for. Of these about five or six will probably select the Judicial line, while seven or eight will probably select the Executive line. With regard to those who select the Executive line, it has long been held that it is not the function of the District Magistrate to try criminal cases, and as a fact he very rarely does try such cases. Important criminal cases are almost invariably tried exclusively by the Joint Magistrate or senior covenanted or uncovenanted assistant at head quarters. Districts in which an experienced Subordinate European Magistrate is not ordinarily stationed are at the same time districts in which Europeans are rarely met with, and these may therefore be left out of the question. There are 46 districts in Lower Bengal. When, therefore, these seven or eight Native civilians in the course of the next 10 years rise to the rank of Magistrate-Collector, there will be practically no difficulty whatever in posting them to districts containing an experienced European assistant, or in providing them with one from the large number that are constantly returning from leave or seeking a transfer. During the next ten years, therefore, the administrative inconvenience will be infinitesimal.

After 20 years the case will be much the same. Let us suppose that the full proportion of one-sixth has then been attained, and that out of 46 districts, one-sixth, *i.e.*, seven or eight districts, are administered by natives; we thus obtain the very same situation that has just been considered. It must therefore be admitted that as long as the proportion of native to European Covenanted Civilians does not exceed one-sixth, so long will any administrative difficulty, as regards the Executive branch of the service, be practically unfelt.

To take now the Judicial branch of the service: there are fewer judicial than executive appointments, and in consequence fewer civilians select the Judicial branch of the service. At the end of the years not more than five or six native civilians are likely to be occupying the post of District Judge. There are 30 judgeships in Lower Bengal, including Chota Nagpore: one-sixth of 30 is five; so that at no time may we expect to find more than five or six native District Judges in Lower Bengal. Now the number of cases in which Europeans appear as accused persons in the mofussil, is, as I have endeavoured to show above, admittedly small; but instances of Europeans being committed to the sessions courts for trial are extremely rare.

Perhaps these five native Judges might have between them one such case in a year. If, in the exceedingly rare case of an European being committed to the sessions court for trial, the Sessions Judge should happen to be a

native of India, the inconvenience of transferring such a case to a neighbouring district for trial will be practically unfelt. In the matter of appeals it is much the same. In the rare cases in which Europeans appeal from decisions given by European Magistrates, there would be practically no inconvenience in having such appeals decided in a neighbouring district. Appeals are usually decided on the record; and it may be assumed, from present public opinion, that an European would infinitely prefer incurring the expense of prosecuting his appeal in a neighbouring district, rather than have his appeal decided by a native tribunal. I think, therefore, we need not hesitate to dismiss as practically non-existent the alleged administrative inconvenience in the Judicial branch of the service also. In Behar especially, so far as my division of Patna is concerned, the extensive railways all over the division, the almost perfect means of communication opened out everywhere, both by road and river, have made every place in each district easily accessible, so that I cannot conceive a single instance where "administrative inconvenience" would ensue, when it was found necessary to transfer a case on account of defect in jurisdiction.

18. Considering this question in another phase, I am reminded that the direct effect of the proposed legislation would be to diminish considerably the total number of officers competent to try Europeans; for while there is to be no increase in the numerical strength of the Covenanted Civil Service, from which body alone justices of the peace are hereafter to be selected, the proposed Bill does not empower local Governments to appoint to this office members of the Military or Uncovenanted Services, or of the non-official community, even to fill up the vacancies caused by the retirement of the uncovenanted officers and others who are now justices of the peace.

The result brought about will be that the number of justices of the peace cannot exceed the numerical strength of the Covenanted Civil Service. How great this reduction in numbers will be, may be inferred from the fact that, exclusive of military officers and non-officials, there are at present 40 Deputy Magistrates who are Justices of the Peace. It is obviously convenient that European Deputy Magistrates should be Justices of the Peace when in charge of sub-divisions, or at head-quarters of districts filled with Europeans; and the only reason to the contrary can only be the fear of making a distinction between them and native Deputy Magistrates. The Magistrate of Shahabad points out particularly to me the inconvenience in the adoption of the Bill, from an administrative point of view, in the case of Sessions Judges. A native would preside over the court, while the majority of the jury, in a case where an European was the accused, would be Europeans. Speaking as responsible for the due prosecution of such, I should regard such a mixed tribunal as the most unfavourable for the ends of justice, as long as the Europeans retain present opinions. The jury would distrust the Judge, a state of feeling pregnant with administrative inconvenience. Justices of the Peace act without juries in trying Europeans for offences which in England would be cognizable by juries; they have a difficult and invidious task to perform, even when the presiding officer commands the respect of the community. If natives summarily condemn Europeans without the verdict of juries, we may apprehend considerable administrative difficulties, particularly when the accused are soldiers, and the offences charged are not of a kind to alienate the sympathy of their comrades.

Mr. Nolan in Shahabad, speaking from the experience of something of the relations between a regiment on the line of march and a native civilian in charge of the Sasseram sub-division, says, with much force I think, that he has no doubt that, if an affray had occurred between ryots and soldiers as to the collection of supplies, and the native civilian had attempted to try the European soldiers, the result would not have been all that could be wished.

19. In conclusion, I beg to say that the opinions I have submitted above embody a verdict against the proposed Bill, as being eminently impolitic and absolutely uncalled for, given by every one of the seven district officers of my division, without exception.

I have, &c.
(Signed) F. M. HALLIDAY.

Letter from the SECRETARY to GOVERNMENT, BENGAL, to SECRETARY to GOVERNMENT of INDIA, Legislative Department,—(No. 651J.D., dated 18th May 1883).

* Printed as paper under No. 15.

† Letter from the Commissioner of Bardwán, No. 204, dated the 7th May 1883, and enclosures.

Letter from the Commissioner of the Presidency Division, No. 38 J.J., dated the 7th May 1883, and enclosures.

In continuation of my letter No. 614J.D.,* dated the 15th instant, I am directed to submit, for the information of the Government of India, copies of letters † from the Commissioners of the Bardwán and Presidency Divisions, reporting on the Bill to amend the Code of Criminal Procedure, 1882.

(Signed) F. B. PEACOCK.

Enclosures referred to in the preceding Letter.

Letter No. 204 from the COMMISSIONER of the BURDWAN DIVISION to the SECRETARY to the GOVERNMENT of BENGAL, Judicial Department, dated Chinsurah, the 7th May 1883.

I HAVE the honour to reply to your No. 1518J., dated 27th March last, calling for my opinion on the Bill to amend the Code of Criminal Procedure.

2. All the European officers whom I have consulted are unanimously of opinion that the principle of the Bill is absolutely indefensible, and that no inconvenience has ever arisen from the present state of the law. I am also of this opinion.

3. As regards any inconvenience that might theoretically be assumed to result from the inability of certain native officers to try European British subjects on criminal charges, the experience of myself and the district officers of this division must, I think, be held to have peculiar weight. Here, if anywhere, such inconvenience, if it ever existed, would have shown itself unmistakably.

4. The Burdwan Division, comprising the whole of Western Bengal, contains the populous and important town of Howrah, with a larger proportion of British inhabitants than any place in Bengal outside Calcutta. It also contains the large railway depôts of Raneegunge, Assensole, and Rampore Hât, the population of which is principally European, as well as 225 miles of railway along which trains worked by Europeans are constantly passing. In and around Serampore there is also a considerable European population, and there are numerous Europeans engaged in the silk and indigo industries in Midnapore and Bankoora, and employed on steamers and in engineering works on the rivers and canals.

5. Several of the native civilians who were appointed in England, and several of those appointed under the Statute in India, have also served, or are still serving, in this division.

6. In spite, however, of all these conditions having existed for several years past, there has never been the slightest difficulty in bringing Europeans to trial. On the rare occasions when there has been no European Magistrate at Raneegunge, it has been found perfectly practicable either to bring the accused by rail to Burdwan, a journey of only two hours, or the Magistrate of Burdwan has been able, without any inconvenience, to go to Raneegunge to try him. Similarly it has always been found easy to provide for the trial of railway servants in the case of accident occurring on the line in the Howrah and Hooghly districts. In petty cases, such as drunkenness, Europeans have invariably shown themselves very reasonable, and have waived their right to be tried by an European Magistrate, rather than delay the disposal of their case.

7. There is no undue obstructiveness on the part of Europeans in such petty matters, and there is consequently not the shadow of a reason for supposing that, under the present constitution of the Judicial Services, the changes contemplated by the Bill are in any way necessary.

8. Even if, however, any such reason did exist when the Bill was first introduced, the events that have occurred since then are so serious, and the state of feeling excited by it is so grave and so suggestive of grounds for

anxiety in the future, as to outweigh any considerations that may have seemed forcible to those who introduced it. Only a few months have elapsed since the Bill first made its appearance; but already we, who live among the people and have the best possible opportunities of gauging public opinion, tremble for the results that must ensue if it becomes law.

9. In common with all right-thinking men, I deeply regret and disapprove of the intemperate language used by Englishmen at public meetings, and it is with equal disapproval that I have read the scurrilous and offensive articles that have appeared in native newspapers. Serious men on both sides, I am well aware, deplore these ebullitions of bad taste and bad feeling; but unfortunately political contests cannot be fought out by serious men alone; there must always be excitable and irrepressible followers on either side, who embitter the discussion by personalities, and sometimes render reconciliation impossible.

10. I see only too much reason to fear that the animosity and ill-feeling that has been roused by this Bill will not soon die out. Bengalees will not soon forget the scathing contempt shown towards them by Englishmen, nor will the latter forget or forgive the insulting taunts of the native papers. So much of evil has this Bill already worked, and it seems probable that these sentiments will deepen into a permanent antagonism of race against race, which will seriously injure the Government and retard the development of the country.

11. Before this agitation began, the relations between the Englishman and the Bengalee, as far as my extensive experience goes, were on the whole very friendly. The Englishman believed, as he always has, and always will, in his own personal superiority and in the superiority of his race, but he readily admitted the intellectual ability and other good qualities of the Bengalee. We indulged, perhaps, among ourselves in a little good-natured satire on certain features and the habits and manners of the Baboo, which seemed to us ludicrous; and he, on his side, I doubt not, laughed behind our backs at some of our eccentricities. But the two races lived together on very friendly terms, and there were frequent instances of acts of kindness done by one to the other. A very overwhelming majority of the native population were quite contented to take an attitude of inferiority to Europeans generally. The acuteness which is one of their strongest characteristics led them to see that more was to be got by approaching the proud Englishman humbly, and by flattering his vanity, than by opposing him and striving to wring concessions from him by force.

12. But there has been growing up of late years a class of natives who, though numerically few, have become, by their extravagant pretensions and excessive self-conceit, by their unreasonable and unsatisfied longing for power, and by their morbid discontent and disloyalty, a serious danger to the stability of our rule in India. It is we who have created these men, and we have now to fear lest, as the poet writes, "we perish by this people we have made." If we perished, the Bengalee would not hold his own country long; he would be conquered and enslaved by manlier races, and the country would relapse into the chaos from which we rescued it little more than a century ago.

13. It may be thought that I am letting my forbodings carry me too far. I can only say that I am expressing, as faithfully as I can, the impressions formed by long years of residence among and intimacy with the people. It is true this present Bill may be but a small thing, and some people may wonder at its giving rise to so much agitation. But it is generally some very small thing that sets kingdoms in a blaze, especially if it has been led up to by a course of action which has caused much smouldering discontent.

14. The Stamp Act of 1776 was in itself a small thing, but it led to the revolt of all the American colonies, and their permanent severance from the British Crown. If, as is hinted, this present Bill is only put forward to pave the way for wider measures by which the majority of posts in the administration of this country are to be held by natives, then this Bill may have consequences as far reaching as the Stamp Act, and far more disastrous.

15. Of the three classes to be considered in relation to this Bill, I will take first the Englishman (by which I mean the European British subject). The

Englishman would not have been so much excited about this present Bill, had it not been the last of a series of measures which he has for some time watched with unconcealed annoyance. The admission of natives to the Covenanted Civil Service and to the Bench of the High Court were both very unpopular measures with Europeans of all classes. Then came the so-called statutory civilians, whose creation was felt to be a direct and bitter insult to the English Covenanted Civil Service. While a young Englishman of good birth, who has lived from his childhood in an atmosphere of the highest civilization that the world has yet attained, has been educated at an English public school and university, and has gone through a period of special training besides, is first subjected to a severe competitive examination, then to two years further training in England, followed by a second examination, before he is allowed even to enter the Civil Service, a young native gentleman, who has had none of this training, who is often very imperfectly educated, and whose childhood has been subjected to the far from elevating influences of native society, is considered fit to be admitted to the service at once, and without any preliminary test of his qualifications. It is impossible to imagine what justification there can be for such an amazing anomaly as this.

16. All these things have been felt very bitterly by Englishmen, and there has been added of late years the very great difficulty which Europeans settled in India have found in providing for their children. One department of Government after another has been closed to all but Asiatics; and even when not absolutely closed, the preference shown for these latter has been so marked, that a man of European birth has had no chance of employment. The Roorkee Resolution was the last of this series of measures by which men of the ruling race have been excluded from rule, or even from subordinate employment.

17. In its laudable anxiety to do as much as possible for its Asiatic subjects, Government seems to have forgotten that it had a large number of European and Eurasian subjects also, whose claim upon it was at least as great as that of Asiatics.

18. Consequently the outcry against this Bill must be regarded as the explosion at last of long pent-up discontent. I am sure that the wiser and more thoughtful among us do not for an instant begrudge the native his share in the posts at the disposal of Government: we only claim for our countrymen our share also. Many of us, among whom I may be reckoned, though sincere well-wishers to the natives of this country, which we have spent the best years of our lives in serving, think that the native as a rule has not yet reached that pitch of development at which he is fitted for high appointments. I think they are fitter for judicial than executive work; but certainly, in the latter line, I have never seen any native who was, in my estimation, fit to be anything higher than a Deputy Collector. As second in command, a native is admirable, but as first he is utterly deficient.

19. All the feelings which I have alluded to above will be much intensified if natives are allowed to try Europeans on criminal charges. It is galling enough to my countrymen to have natives placed on a level with themselves. It is worse still when a native is admitted without test to posts which the European can only obtain by repeated trials and severe examinations. It is worse still to have one's children excluded from posts under Government, while natives are admitted, even if acknowledged to be inferior. But it is indeed the last straw when the Englishman, already placed at so great a disadvantage in the struggle for existence, is liable to be tried as a criminal by native Magistrates.

20. For it can hardly seriously be contended that a man brought up in a Bengalee village or town, receiving all the education he can boast of at a zillah school and a Calcutta college, can become perfectly acquainted with English ideas and tones of thought, and with the motives that actuate English men and women, by a residence of two or three years in London.

21. I remember hearing about one of these gentlemen who had spent three years in England, and was asked what he thought of our country. His answer was: "I really know nothing whatever about it. I spent all my time in a room at Notting-Hill studying, and I know no more of England than I could learn in my daily walk from my lodgings to the lecture-room."

22. This is one of the men whom the Hon. Mr. Hunter wishes to persuade us are "more English than the English." It is an unfortunate phrase to use. The hon. gentleman probably had in his mind the description of the disorderly English of the tale, who were *Hibernis ipsis Hiberniores*—more unruly, more bloodthirsty, more treacherous, and more opposed to their lawful sovereign, than even the wild Irishry of the interior. Are we to understand that the Bengali, who is more English than we ourselves are, is so in the same sense as the English in Ireland in the 17th century, namely, in that he imitates us and surpasses us in all our vices? If so, the phrase is hardly a recommendation.

23. I have been led insensibly from describing what I believe to be the feelings of my own countrymen, to discussing the attitude of the second of the three classes affected by this Bill—the educated native. I have said that this class is a creation of our own. Natives educated to such an extent that in the opinion of some persons they have become thoroughly English in their ideas, and fitted to hold the highest posts under Government, are to be found chiefly in Bengal, and it is therefore the educated Bengalee whom we must consider in this connexion.

24. It is well known to every student of history that, down to the establishment of English rule in Bengal in 1765, that province was the most distant and neglected portion of the Mogul Empire, and Bengalees themselves freely admit that their rise in wealth and civilization has been effected entirely under British rule. We may be proud of the improvement that has taken place during the last century and a quarter, and we may fairly ascribe much of it to the education which has been imparted to the people.

25. But in one respect at least it seems to me that this education has led to awkward consequences. What is called the higher education has been pushed on because it yielded more brilliant results, while we have neglected the less showy but more solidly useful task of educating the masses. In Bengal, where wealth is concentrated in the hands of a very limited number, while the great majority of the people have very small incomes, the youths who pursue their studies up to the highest level are for the most part poor, and have to earn their bread in after life.

26. Now, if the country at large had been educated *pari passu* with this small class of youths—if it had attained to a civilization in any way resembling that of European countries—these educated young men would readily find a livelihood in liberal professions, in commerce, or artistic and scientific employments. But the civilization of the country has lagged so far behind the higher education, that there is little or no occupation for members of the liberal professions.

27. A certain number of the graduates of the University find employment as pleaders and law agents, and a few earn a livelihood by the practice of medicine. But these are only a small fraction of the multitudes of educated youths who are yearly turned out of our schools and colleges. In default of any other means of earning their bread, most of them press into the Government service, and as the lower ranks get more and more overstocked, they push forward into the higher ones. They are not hindered by any modest doubts as to their own fitness for high employ. Those who are not successful become naturally discontented and outwardly at least disloyal. It is men of this already numerous class who take to writing in the Native newspapers in a tone of disaffection to Government, which is partly adopted to make their papers sell, and is partly nothing more than the jaundiced views of life held by all disappointed and unsuccessful men.

28. Unfortunately the Natives of this class have succeeded in persuading influential persons in India and England that their views and their utterances represent the real feelings and aspirations of the Native population in general. Nothing could be more entirely mistaken than this idea. There is in reality no disloyalty or discontent in the minds of the people at large, nor is there, in point of fact, in the minds of the class who write most disloyally. If the editor of the most seditious paper in Bengal were to get a well-paid appointment to-morrow, he would assert that the British rule in India was a pattern of excellence, justice, and enlightenment. It is a pity that so much weight is attached to the opinions of these people. They are doubtless very clever, and write and speak very eloquently. But all their opinions are in truth

nothing but place-hunting and power-hunting, more or less artfully disguised. By the mass of their countrymen these people are regarded as aliens, as more than half English, and are looked on by the orthodox classes with positive dislike, as men who have forsaken the faith of their fathers. If we wish to gratify the Natives of this country by giving effect to their wishes and consulting their opinions, we must not go to this class, whose eagerness for power and discontent with their present condition render them the very worst possible exponents of the real feelings of their countrymen.

29. I now come to the real Native of the country. I mean by this term those Native gentlemen of respectability and experience who have not severed themselves from the mass of their countrymen, but who still remain leaders of such public opinion as exists, and true representatives of national feeling. Many of them know English, but their knowledge has not led them into discontent with their lot or disloyalty to their rulers. In an informal way I have taken pains to get at the opinion regarding the Bill held by the principal members of this class.

30. I find that their prevailing feeling is one of indifference to the whole question. They, however, admit that they would always much rather have an Englishman to try their cases than a Native, and they think it highly reasonable that Englishmen should have this feeling also. They think that the passing of this Bill will be very disastrous to their interests, as it will tend to produce in the minds of the Englishmen, whom they still persist in regarding as the ruling power in India, feelings of hostility to Natives, and a cessation of that kindness and interest in their welfare which they have always experienced at their hands. I am afraid that this apprehension is already being justified. I am not the only one who has noticed a growing dislike to Natives on the part of Europeans, and a growing impertinence and insubordination on the part of Natives of the educated classes, and, what is still more lamentable, on the part of school-boys and youths at college, who are too young to understand the real questions at issue, and do but give expression noisily and offensively to the opinions of others. The Natives as a class do not think that they will be in any degree compensated for a loss of the favour and protection of English officials by the elevation to positions for which they are not (in their opinion) fitted, of a small number of ambitious young men who, while ceasing to be genuine Hindus, have not succeeded in becoming genuine Englishmen.

31. I have endeavoured, in the preceding paragraphs, to give the results of my own observations as to the real opinions of all classes concerning this Bill. I have not thought it necessary to go into all the legal arguments for and against the measure. This task has been ably and exhaustively performed by better men than me, and it would be superfluous for me to attempt to improve on their speeches or writings. I will merely sum up by expressing my firm opinion that the measure is not called for by any administrative inconvenience, that it is not desired by the Natives as a body, that it is intensely distasteful and humiliating to all Europeans, and that it will tend seriously to impair the prestige of British rule in India. In fact, under a very simple and insignificant form, it conceals the elements of a revolution which may ere long prove the ruin of this empire.

32. Is it worth while to risk all this to gratify the vanity of a small class in one only out of the many nationalities into which India is divided? These nationalities have no bond of union, and there are very few of them that would consent to be governed by Bengalees. These young men who now clamour for this privilege knew when they entered the Civil Service that they would not be allowed to try Europeans; yet they strive to make out that conditions which they accepted with their eyes open are now felt by them as a slur and a hardship.

33. I do not of course lose sight of the assertion of Government that this small measure is complete in itself, and that no further concessions are intended. I have no doubt whatever that Government is perfectly sincere in making this assertion. But this, or any succeeding Government, may be driven by force of circumstances to make further concessions. When you have once set your foot on an inclined plane, it is difficult to avoid sliding to the bottom.

34. And although Government thinks it can stop at this point, the educated Natives do not think so, and they have told us through their public organ that they will not be satisfied with this measure, but will continue to agitate for still greater concessions, and to press their claims until not a single appointment is left to Europeans. They are at the present moment full of exultation and the hope of a coming triumph; for as a triumph over their former masters they regard it, and make no secret of their opinion.

35. On the other hand, the minds of Europeans are full of apprehension of coming defeat and humiliation, and even the uneducated natives are getting dimly to perceive that a great change is at hand, which in some mysterious way, and for reasons which they can no more comprehend than we ourselves can, will lead to the putting down of the "Sahib" and the raising up of the "Baboo."

36. Now, if already, within the short space of time that has elapsed since the Bill was first heard of, these feelings have arisen, is it possible for Government to say that they will go only so far, and no farther? And it matters little—it will affect the peace of the country very little—for Government to say that they never intended that people's minds should get into this state of excitement and exasperation. Whether intended or not, the feeling is here before us, and it seems to my humble judgment that a wise statesman, when he sees that a Bill which he thought innocuous, has for some reason roused up a bitter spirit of mutual antagonism between different classes of the community, and has been an apple of discord suddenly thrown among them, would at once withdraw the cause of offence. He would study the views and tempers of those for whom he had to legislate, and feel carefully the public pulse before he again proposed so delicate a measure.

37. Of course we are all aware that there has hitherto been so little public opinion in India, especially among Europeans, that an Indian legislator has been able, without risk of causing dissatisfaction, to frame his measures to a great extent in disregard of what the people may think. But on the present occasion we have a distinct and unmistakable expression of opinion, which, though disfigured at first by some intemperance of expression, is undoubtedly deep and lasting, and of such a character as no statesman, no ruler who is not a mere autocrat supported by armed force, can afford safely to disregard.

38. All who wish well to this great Empire, and take an earnest interest in the prosperity and progress of all classes, whether Native or European, cannot but earnestly hope and pray that this most mischievous Bill may be withdrawn, and that means may be found for gratifying the legitimate aspirations of the educated Natives, without placing them in the perilous position of being hated by their European fellow-subjects.

39. It has been pointed out by several writers in the public journals, and by several of the officers whom I have consulted, that the Bill as it now stands will render it impossible for any European Deputy Magistrate who may hereafter be appointed, as well as for the numerous European honorary magistrates in the interior, to try their own countrymen. Surely this is creating a far greater anomaly than that which it is desired to remove; and this step has not even the recommendation, if recommendation it be, that the rest of the Bill has, for it cannot in any way tend to remove whatever slur there may lie on Native civilians, to cast a slur on European magistrates.

40. I have selected three of the letters I have received for submission to Government. The letters of the magistrates of Burdwan and Midnapore are, I think, very forcibly and ably written. The third letter is by Mr. Brojendronath Dé, joint magistrate of Hooghly, and may be taken to express the views of the small section of Native society to which he belongs. Mr. Dé entirely fails, in my opinion, to see the real point at issue, and there is a tone of dislike to Europeans, and almost disrespect towards Government, that augurs badly for the future conduct of this class, if they get the power they desire into their hands. I look upon this letter as one of the strongest arguments against Mr. Dé's view of the case that could be imagined.

I have, &c.

(Signed) JOHN BEAMES.

LETTER No. 43G, from the MAGISTRATE of BURDWAN to the COMMISSIONER of the BURDWAN DIVISION, dated Burdwan, the 13th April 1883.

WITH reference to your circular memorandum No. 50, dated 4th instant, forwarding copy of letter No. 1518J, dated 27th ultimo, from the Secretary to the Government of Bengal, and asking for an expression of my opinion on the subject of the proposed amendment of the Code of Criminal Procedure, I have the honour to state as follows :—

2. The question in its general aspect has been so thoroughly discussed in the public prints and elsewhere, that it seems unnecessary for me to undertake a detailed examination of the various arguments for or against the proposed Bill. It will, I think, suffice for me to set forth briefly what appear to be the salient points on each side of the controversy, and to state what my own views are, giving my reasons therefor, whether derived from general considerations or from personal experience.

3. The arguments in favour of the Bill are two-fold—*first*, it is alleged that it will get rid of an unnecessary anomaly, and remove a judicial disqualification which is based merely on race-distinctions; *secondly*, it is urged that the passing of the Bill is necessary to prevent serious administrative inconvenience within a measurable distance of time. The first argument is based upon a general principle, involving a question of national policy; the second depends upon an actual state of facts.

4. It is impossible for any man holding liberal views to deny the expediency of removing distinctions founded merely on differences of race or class, provided that the evil consequences of such removal do not more than counterbalance the benefits that must naturally result from action founded on sound general political principles, and provided that the proposed change is one of sufficient magnitude to justify the rousing of an opposition which, even if unreasoning, is in itself an actual evil.

5. The opponents of the Bill traverse both these provisos. They allege that the race antagonism which has been excited by the mere proposal of the Bill, and which would be perpetuated if it were passed, will be productive of infinitely greater mischief to the country than any amount of theoretical relief to sentimental disabilities can possibly counterbalance, and they further argue that the anomaly which it is proposed to remove is of such an isolated and superficial character that the mere fact of the existence of a bitter opposition on the part of those to be affected by the change is sufficient to condemn the whole proceeding.

6. To the allegation that administrative inconvenience would necessarily result unless the Bill be passed, a point blank denial is given.

7. In addition to these demurrers, there has been made the further positive assertion that the men whom it is proposed to vest with the powers of a justice of the peace are actually unfitted for the exercise of those powers.

8. In my opinion the opponents of the Bill are victorious all along the line. The most intense animosity has been excited amongst those who would be affected by the change. I can testify that in this district the feelings of Europeans of all classes are unmistakeably roused, and I have no doubt that, if the Bill were passed, the hostility which is now felt to the measure, and possibly to its more prominent supporters, would, in the case of many, extend to the whole machinery of Government. It would be well to hesitate before allowing the possibility of such a disaster to occur.

9. Further, on general principles, it is of the highest importance that those subject to the jurisdiction of certain courts should have confidence in the fairness and justice of those courts; but if the Bill were to become law, a whole community would be subject to tribunals which they not only distrusted, but viewed as alien and almost hostile. Indeed, in some parts of Bengal, I have not the slightest doubt that an attempt on the part of a Native magistrate to carry out the law by imprisoning a British European subject, more especially if of the female sex, would lead to a serious disturbance, possibly resulting in loss of life. From all these practical considerations it seems to me that it would be impolitic, nay almost dangerous, to the interest of the country to run in the face of a wide-spread and almost fierce opposition, merely for the purpose of removing a disability which can possibly effect but

few, and in the removal of which I believe that some even of those few are but slightly interested.

10. Next as to the alleged administrative inconvenience. As far as I can see, there is little or no probability that any such would accrue. Magistrates of districts seldom try cases, and there are very few, if any, districts frequented by Europeans in which there are not several justices of the peace. As regards sessions judges, the extension of railroads will prevent any serious inconvenience being experienced. It may be well to observe, however, that even if Native magistrates were vested with the powers of a justice of the peace, it is very improbable that they would be appointed to districts in which there were a large number of Europeans, for there are many considerations, of almost greater importance than that now under discussion, which would render it impolitic that such appointments should be made.

11. It might illustrate the above argument if I were to instance the case of the Raneegunge sub-division. Although there are a large number of Europeans resident therein; but little inconvenience would result if the sub-divisional officer were not vested with the powers of a justice of the peace, for any case of a European British subject could easily be tried in Burdwan, or a competent officer could be sent to Raneegunge. At the same time I think it would be very injudicious to place a Native magistrate in charge of the sub-division, for this reason, amongst others, that he could not secure the co-operation of the European residents in the administration of affairs, or in carrying out any works of public utility.

12. It now remains for me to discuss the question of personal fitness. I would gladly avoid doing so, for I number several of the Native members of our service amongst my friends; but it is absolutely necessary to give the result of experience in regard to this element of the discussion as opposed to the general allegations made by some who evidently spoke without knowledge. I have had the advantage of having official relations with six Native members of the Covenanted Civil Service, three of whom were appointed after competition, and three by selection. My personal acquaintance with one of the former was slight, and I shall therefore say nothing with regard to him; but with reference to the others, I have no hesitation in saying that I would remove from their file any case in which the personal liberty of a European was concerned. I do not say this with any intention of attributing to them any want of zeal or honesty of purpose, nor do I think they would always err on the side of harshness; but they are undoubtedly deficient in that strength of character which would be absolutely necessary for the trial of such cases.

13. Influences of various sorts would be brought to bear upon them, and I candidly confess that I do not think they would be able to withstand them.

14. To sum up, then:—The theoretical advantages which the Bill proposes to secure are of the slightest; the immediate practical advantages are non-existent.

The passing of the Bill would excite a violent storm of hostility to Government, and perpetuate a race animosity most injurious to the interest of the community.

The individuals whom it is proposed to invest with powers hitherto withheld are not fitted for their exercise.

LETTER from R. H. WILSON, Esq., Magistrate of Midnapore, to the COMMISSIONER of the BURDWAN DIVISION, No. 1435, dated Midnapore, the 28th April 1883.

As requested in your endorsement No. 50, dated 4th April, I have the honour to submit an expression of my opinion regarding the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. It appears to me that the Bill involves no question of principle. It may be theoretically desirable that all classes of Her Majesty's subjects in India should be placed by the law in a position of equality. But this end would not be attained by the proposed legislation, which would merely slightly shift the line distinguishing European British subjects from persons of other nationalities. Moreover, as the English Empire in India exists, and is justified

in maintaining itself only because Englishmen have proved themselves to be stronger and more capable of ruling justly than the Natives of the soil, it is solely on the ground of expediency that our position can be reasonably defended, and principles applicable to institutions developed elsewhere from indigenous elements might lead to conclusions incompatible with the maintenance of our rule. In the remarks which follow, I shall therefore confine myself to the practical aspect of the question under consideration.

3. I do not think that any administrative inconvenience is likely to result from allowing the law to remain as it is. In most Bengal districts there is a joint-magistrate who has charge of the criminal judicial work, whether the accused persons are of European or Asiatic blood. I have been for some years magistrate and collector of large districts, without trying a single original criminal case, and a Bengali gentleman occupying my position would naturally, and as a matter of course, act in the same way. There are some small districts which are often left without a joint-magistrate, but there can hardly be any administrative necessity for posting to such of these small districts as contain non-official Europeans a magistrate and collector of Asiatic blood. In districts containing a large body of non-official Europeans, it will always be necessary to have a European collector, and this necessity would be in no way affected by the proposed legislation, arising, as it does, not from any artificial provision of law, but from natural causes over which Government can exercise no control. A Lieutenant-Governor who placed a Bengali gentleman, however upright and enlightened, in a position in which an important part of his duty would be to exercise personal influence over a large body of English planters would, in my judgment, show a lamentable want of discretion. No one can regret more than I do the recent outburst in the public press of hostility between Englishmen and Bengalis; but I cannot shut my eyes to the fact that the two races are in many respects different, and I am of opinion that it is, and will continue to be, sometimes the duty of Government to distinguish between them in selecting for particular duties those of its servants who are most capable of discharging them efficiently.

4. Apart from the question of administrative inconvenience, discussed in the preceding paragraph, the chief argument used in favour of the Bill is founded on the propriety of removing the slight put by the present law upon officials of Asiatic blood, and through them on Her Majesty's Asiatic subjects generally. This ground of objection to the law as it stands is sometimes stigmatized as sentimental; but what may be called mere sentiment is often a very important political force, and it appears to me that the argument, so far as it goes, is a good one, which should have its due weight. But the class which feels, or at all events which till recently felt itself slighted, is comparatively speaking a very small one. The Native gentlemen whom the heads of Government meet in Calcutta are not fully representative of any large class throughout the country. Till the present proposal was brought forward, I do not believe that it had ever occurred to a single person among the two and a half millions of Midnapore to feel himself slighted, because civilians of Asiatic blood cannot, out of a presidency-town, try a European British subject. Now of course the case is somewhat different. An angry strife of words having arisen between Europeans and Bengalis, it is but natural that members of the latter class should take part with their fellow countrymen.

5. The opposition to the Bill has its first justification in the peculiar position of non-official Europeans in the interior of the country. An Englishman so placed must often have interests clashing with those of some of his neighbours and dependents, and must therefore expect to be made the subject of false criminal charges, which he has to meet at a considerable disadvantage, because he is no match for a Bengali in intrigue, and does not consider it justifiable to meet perjury with perjury. On referring to the General Administration Report for the year 1881-82, I find that, of the criminal charges enquired into by the Bengal police, 9·6 per cent. were found to be entirely false. There are no similar statistics about non-cognizable offences, but the percentage of false charges under this head must be considerably larger. This is sufficient to show what an important element false complaints are in rural life in Bengal; and indeed to those who have any knowledge of the country, no such proof is necessary. Living, then, as he must in an atmosphere of intrigue, in which systematic perjury is among the ordinary

incidents of every-day life, I think that the position of the most inconsiderate English planter would be considerably less secure if he were liable to be tried by an Asiatic judge or magistrate. This opinion implies no distrust of the probity of Native officials, many of whom, in positions much below that of a civilian, I know to be thoroughly upright and just; but it is always difficult for a judicial officer in this country to get at the real facts. Much more weight has to be given here than in England to circumstantial evidence and probabilities as compared with the direct statements of witnesses, and I cannot but think that a Bengali judge's necessarily imperfect knowledge of English life and character would often place him at a great disadvantage in weighing the circumstances and probabilities of a case in which the accused person was an Englishman. Nor can I conceal from myself the fact that, partly through their own faults, partly from the force of circumstances, non-official Englishmen are very often objects of dislike to the Native community, and that a Bengali judge is likely to be sometimes unconsciously influenced by any strong wave of feeling moving the society in which he lives. It may be said that this argument applies to the trial of Bengalis by European magistrates, and I think that there are certain classes of cases which a Native deputy magistrate can try more satisfactorily than a European joint-magistrate; but there is a considerable difference between the two cases, because the English civilian has, and the native civilian has not, devoted his life to work involving a study of the character and habits of the foreigners to be brought before him for trial.

6. The above considerations have special force in the case of Englishwomen. You are aware that one of the commonest Bengali devices for annoying an enemy is to bring a false charge of such a character as to involve the appearance in court of some female relative of the person accused, and it is not probable that this weapon will be forgotten or laid aside if Englishwomen should be made liable to the indignity of appearing before a judge whose ideas regarding their sex and its character, and regarding the lines which separate respect from insult, are altogether different from those which prevail in Europe. The civilians of Asiatic blood appointed by competition have, I believe, all adopted the European mode of life; but the Bill draws no distinction between them and the nominated members of the service.

7. It may be said that the evils which I apprehend from the proposed measure have not arisen in the presidency-towns; but a very little consideration is sufficient to show that the two cases differ widely. In a presidency-town a non-official European has generally nothing to do, except in the way of commercial business, with any Natives of India except his own servants. He lives very much as he would in England, and has no hostile intrigues to contend against. Circumstances of publicity unfavourable to successful perjury make the institution of false charges comparatively rare, the percentage in Calcutta for 1881-82 being 2·8 instead of 9·6, as in the mofussil. There is so little to bring him into collusion with his neighbours that an Englishman in Calcutta does not look upon the magistrate's court as an institution personally concerning himself at all. He reads, or more probably does not read, the reports as he would in England, and that is all. But the management of land in almost any part of the province involves more or less of strife, as the history of our Government estates sufficiently shows. A planter cannot hope to be without enemies, who may at any time bring him into court, and the present question is therefore to him one of great practical importance. I am far from thinking that an English planter is always or generally in the right in his disputes; but the fact that he has to be controlled as well as protected from false charges only makes it the more necessary that as strong a hand as possible should be placed over him.

8. There can be no doubt that if there is no reasonable ground for the existing feeling against the Bill on the part of the European community, this feeling will in time subside and disappear; but it will be apparent from what has been said above that in my judgment their hostility is justifiable, nor do I think it likely that the time will ever come when Englishmen in India or elsewhere will acquiesce in a measure subjecting their wives and daughters to the criminal jurisdiction of judges whose ideas on the subject of women and marriage are not European, but Oriental.

I have, &c.
(Signed) W. R. LARMINE.

NOTE by the JOINT-MAGISTRATE, Hooghly, on the CRIMINAL PROCEDURE CODE
AMENDMENT BILL.

THE present report has been called for on two points—

I. The principle of the Bill.

II. Whether any administrative inconvenience at present arises or is likely to arise in the future, from the exclusion of Native covenanted civilians from the power of trying European British subjects on criminal charges.

I. On the first point it is needless to say much. All that could be said for or against the principle of the Bill has been already said in the course of the preliminary discussion of the Bill in the Supreme Council; and it is not possible to add to the clearness and force with which the arguments *pro* and *con* were there stated. It may not, however, be entirely useless to mention one or two considerations in favour of the principle of the Bill. A great deal has been said by the opponents of the Bill about the Briton's birthright. It is hardly necessary seriously to refer to these arguments. The only ground on which the principle of the Bill can be impugned is on an assumption that European British subjects cannot expect, and will not receive, justice at the hands of the officers who will be invested with jurisdiction over them if the Bill becomes law. Such an assumption can only be justified by a reference either to the proved incapacity or ignorance of the officers in question or to their proved corruptibility. If it can be shewn that these officers are either so ignorant of what will be required of them in the trial of European British subjects or are so likely to be swayed by unworthy race-feelings that European British subjects will not receive a fair trial in their courts, then, but then only, should the Bill be thrown out.

I will take the two points separately:—

(a.) The alleged incapacity or ignorance.—It may be said that a few years' residence in England cannot enable the officers in question to distinguish the nicer shades of a European British subject's feelings and springs of action, or the nicer social distinctions or considerations which may become the subject of consideration in the course of a trial in which European British subjects are the parties. It has also been said that these officers will be unable to unravel the skeins of falsehood and fraud in the meshes of which a European British subject may be thrown by the class of Natives of the country who consider the institution of false charges their only weapon of offence. This last argument is so manifestly absurd that it may be dismissed with a very few words. There can be no doubt that a Native magistrate will be better able to detect the falsehood of a charge got up by his compatriots than a European, and if in these cases Europeans desire to be tried by their compatriots, such a wish can only be explained by an assumption on their part that European magistrates are so thoroughly imbued with the idea that a European can do no wrong, that nothing but the strongest evidence would induce them to hear a complaint against a European, while they would receive a complaint by a European with implicit confidence, not only in his good faith, but in his ability to understand thoroughly the motives of his opponents and their modes of thought and action. I need not say that I do not believe that European magistrates act on the principle just mentioned, and I mention it only as an assumption on the part of such Europeans as may have to stand before a magistrate as offenders against the laws.

I will now turn to the other and more reasonable arguments founded on the alleged ignorance of the officers in question. I do not think that these arguments are valid, for the following reasons:—In the first place, the existence of this ignorance is simply a matter of assumption, and no proof has yet been adduced to show that it exists. These officers have resided in England, have studied English literature more or less thoroughly, and have attempted to learn and understand English modes of thought and action; and it is only reasonable to ask that they should not be adjudged ignorant of such modes of thought and action till the contrary is proved. In the second place, cases are tried on the broad principles laid down in

the Penal Code and the Evidence Act, and not on individual or even national idiosyncracies or modes of thought.* In the third place, it is almost the everyday experience of a magistrate that in the trial of cases which come before him, he is confronted with modes of thought, combinations of motives, and conjunctures of events and circumstances of which he was entirely ignorant up to the moment. There cannot be a case more to the point than that of the newly-arrived European civilian. He has, generally speaking, only a very superficial book knowledge of the language, and is entirely ignorant of the way in which the men to whom he has to administer justice think and act; yet if he hears what the parties have to say with patience, and tries to master the facts of the case and to understand how and under what circumstances they acted, he is generally able to hold the balance of justice evenly. And even in the case of European officers of lengthened experience, and I may even add Native magistrates trying Natives, and English magistrates trying Englishmen on English soil, is it not a fact almost of daily occurrence that the Magistrate has to decide on combinations of circumstances and motives which are new to him, and which he would have considerable difficulty in imagining for himself? If the magistrate possesses the amount of intelligence expected of a man in his position, and attempts to master the facts of the case and to enter into the motives and thoughts of the parties with patience and judicial impartiality, he can generally arrive at a correct conclusion; and I am aware of no circumstances which should induce any one to hold that the officers in question will be found wanting in these essential qualities in the trial of these particular cases.

- (b.) I now come to the more serious matter of corruption. But as this charge has not been seriously made by any responsible person, but has only been insinuated in newspapers and by irresponsible public speakers, I will say nothing about it. In concluding this part of the note, I may say that although Native covenanted civilians have not tried many Europeans except Mr. B. L. Gupta, who, as presidency-magistrate, has done so, they have tried many cases in which Europeans were the complainants or were more or less directly interested; but not one case has been yet pointed out in which they either displayed gross ignorance or laid themselves open to the faintest breath or insinuation of being actuated by unworthy race-feelings. I may say that if such cases have not been pointed out, it has not been from any want of will on the part of the opponents of the Bill. The "Englishman," which has "so ably focussed the opposition against the Bill," has not been slow to publish what it could get hold of against Native magistrates and judges, but up to the present moment it has only succeeded in reproducing the judgment of a munsiff in a case which is yet *sub judice* and that of a deputy magistrate which was passed as long ago as 1877, and when the particular officer had been a deputy magistrate for only about a month.

II. I now come to the second point on which an opinion has been called for. On this point, and generally in the course of the whole note, I have to refer somewhat frequently to my personal experiences and circumstances; but this is inevitable as I am a party somewhat interested in the Bill. During nearly the whole of my service I have been in districts in which there was a fair sprinkling of non-official Europeans, but till lately no administrative difficulty has arisen, unless I may call the fact that I could not be placed in charge of one of the Tirhoot sub-divisions, although I served, I may at least say, without discredit at Durbhunga, an administrative difficulty. Administrative difficulties, however, began to arise when I was transferred to Raneegunge. I am not in a position to say what induced Government to transfer me to a sub-division like Raneegunge, and to transfer me again from the place after such a short period as two and a half months. I may, however, say that when I was transferred to Raneegunge, it was on condition that I should withdraw my application for privilege leave, which I had then made, and should not make such an application for six months. I do not say that this last condition

made it compulsory on Government that I should be kept in Raneegunge for a similar period. In the exigencies of the public service I could no doubt be transferred from Raneegunge on the very day after I had received charge there; but in the absence of such an exigency, I could reasonably count on being kept at Raneegunge for at least six months. I am not aware whether any such exigency arose or not, but none came within my cognizance, except that I was supposed to have come into collision with the non-official Europeans. If my early transfer was necessitated by an administrative difficulty, it is undoubtedly to be laid at the door of the disability under which I laboured.

While at Raneegunge I had to try several cases in which European coal-proprietors were very much interested. In one case, Messrs. Apcar and Company charged some of their tenants in Santa village with the culpable homicide of one of their peons, and in another I had to convict and punish some of the servants of the Walipur Concern on a charge of rioting and assaulting police officers while in the execution of their duty. In both these cases I came to conclusions adverse to the Coal Companies. While I had jurisdiction to try those important cases in which, and specially in the latter, the concerns were vitally interested, I could not try a paltry case in which the *khansama* of Mr. Whyte, the manager of Messrs. Burn and Company's works, charged the latter with committing an assault on his person. For the trial of this case, in which Mr. Whyte did not plead guilty, but which resulted in a conviction and a fine of Rs. 5, the district magistrate had to come up all the way from Burdwan to Raneegunge, to the manifest detriment, I should think, of his other duties. If Mr. Whyte had in a straightforward manner pleaded guilty, it might have been a question whether I, as a native of India, could have entered into his feelings and adjudged him the proper punishment, but when he shielded himself behind a denial which must, now after his conviction, be considered to be false, I do not see why I could not have tried and punished him like any Native offender against the law. I ought to mention that, as this case was tried after my transfer, what I have stated is from my recollections of what I heard from Mr. Inglis, my successor, in the course of private correspondence.

Another administrative difficulty has arisen within the last few days. I need only refer to it very briefly, as it must be within the recollection of the district magistrate and the divisional commissioner. I refer to Mr. Warde-Jones' appointment at Serampore. I say nothing about Mr. Jones' fitness for the post, but it is certainly somewhat incongruous that he should have been placed in charge of the sub-division, over the head of a senior deputy magistrate like Baboo Gobindo Chunder Bose. I think that if the joint-magistrate had not been a Native of the country, he would have been deputed to Serampore, and this incongruous arrangement would not have been made.

I am clearly of opinion that, where these administrative difficulties have arisen in the case of a single officer while he is yet a junior, greater difficulties must arise in the case of those who have attained to higher ranks, and that these difficulties will increase year after year.

(Signed) BROJENDRO NATH DÉ,
Joint-Magistrate, Hooghly.

LETTER No. 38JJ from the OFFICIATING COMMISSIONER of the PRESIDENCY DIVISION to THE SECRETARY to the GOVERNMENT of BENGAL, Judicial Department, dated Alipore, the 7th May 1883.

WITH reference to your No. 1518J of 27th March, I have the honour to submit the report therein called for, regarding the Bill to amend the Criminal Procedure Code.

2. I forward herewith the reports of district and sub-divisional officers, and I may mention that I have had frequent conversations on the Bill with other gentlemen, both European and Native.

3. My opinion is asked on two points—(a) the principle of the Bill; (b) whether any administrative inconvenience at present arises, or is likely to arise in future, from the exclusion of Native covenanted civilians from the power of trying European British subjects on criminal charges.

4. So much has already been written on the subject, and the arguments on both sides have been so fully laid before Government, that any very lengthened report from me on the points at issue is not necessary. In reporting on the Bill, I have only in reality to repeat arguments already much more ably laid before Government.

5. It will be observed that every district magistrate in the division condemns the principle of the Bill, and every European officer is of opinion that no administrative inconvenience is likely to arise if the law is allowed to remain as it stands. The Native officials, on the other hand, approve of the principle of the Bill, and, with one or two exceptions, are of opinion that administrative inconvenience is likely in the future to arise. In short, official opinion on the Bill is identical with non-official views, all Europeans condemning, and all Natives approving, the principle of the Bill.

6. The object with which the Bill has been prepared is set forth in the Statement of Objects and Reasons: it is "to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race distinction."

7. It seems to me that, while the principle of the Bill is, when viewed as an abstract proposition, apparently good and logical, it is practically unsound and illogical with reference to the tenure on which we hold, and the circumstances under which we carry on, our administration in India.

8. It is impossible to ignore the fact that we hold the country by right of conquest; and although it is our bounden duty to do all we can for the benefit of the various races in India, any attempt to govern them on principles of universal equality must involve political suicide. This may appear a harsh doctrine; but with reference to the facts of history and present administration, it must, it seems to me, be admitted that, so long as the numerical proportion of Europeans and Natives is what it is, government of the country on principles of universal equality is impracticable.

9. It is further impossible not to recognize the fact that there are race distinctions between ourselves and the people of India. We do recognize the existence of such race distinctions morally, socially, politically, and, until now, judicially. It is now, however, proposed to wipe away race distinctions as regards judicial qualifications and disqualifications of Natives, while allowing such distinctions to remain as before, when regarded from a moral, social, or political point of view. We continue to admit that, as regards morals, social customs, political status, the Natives of India stand, owing to race distinctions, upon a different platform from that of Europeans, but we propose to consider the races as amalgamated and homogeneous as regards judicial qualifications. We continue to send missionaries to convert the followers of Mahomet and the idolatrous Hindoos. We lament the low standard of morality which prevails amongst both these races. We are constantly exhorting them to develop female education, and make woman a companion instead of a prisoner. We decry early marriage, polygamy, and prohibition of re-marriage of widows. We find it necessary to exclude Natives from the European Army, and to prevent them having arms except under license; in all these, and many other respects, we acknowledge, in our moral, social, and political code, that there are wide race distinctions between Europeans and Natives of India, which must tend to keep the races widely apart. It has hitherto been customary to make a similar distinction between the races as regards judicial qualifications. Such distinction it is now proposed to abolish.

10. I confess that I hardly see why it should be considered sound policy to make this innovation judicially, while the causes and effects of race distinctions between Europeans and Natives in other respects are untouched. It seems to me inconsistent to create, or attempt to create, homogeneity as regards judicial qualifications or disqualifications, when the two peoples remain separated by distinctions of race, morally, socially, and politically. I venture to think that, so long as there is such a wide divergence between the races as regards moral standards, social customs, and political status, any abolition of race distinction, with reference to judicial qualifications or disqualifications, must be considered premature. When the two races approach more nearly to one another morally and socially, the necessary divergence which now exists, as regards judicial qualifications or disqualifications, will disappear naturally;

but it will not disappear by virtue of a legislative enactment, which in principle attempts to anticipate the effects of probably centuries of association between different races.

11. I make these remarks, because it seems to me impossible to ignore the fact that the proposed change in the law is looked upon by both Europeans and Natives as involving a race question. It may to the Native seem improper that the European should hesitate to give up any privilege which he has hitherto enjoyed, simply on the ground of pride or prejudice of race. But none the less is it a fact that Europeans do hold this view, and in discussing the question, we have to deal with facts and not with theories. That Natives regard the question as one involving race distinction is every day proved by the articles in the Native press; and although every Hindoo would regard with horror any proposal to diminish the race distinctions of a Brahman, or remove the perpetual race disqualifications of a Sudra, it is considered by all an unbecoming anomaly that Europeans should refuse to part with a privilege which they enjoy as members of the dominant race, in favour of those who amongst themselves retain race distinctions with merciless severity.

12. I proceed now to discuss the principle of the Bill.

I am opposed to the principle proposed for the following reasons:—

First of all, it is, in my opinion, unjust to Europeans.

India has now been at peace internally for a quarter of a century, and the increase of commercial prosperity during that period has been marvellous. There seems to me to be a decided tendency to undervalue the fact that such prosperity has been achieved by European exertion and European capital. Whether we look at railways, shipping, trade, commercial enterprise of every kind, the mark of the European is everywhere visible; and apart from the question of dominant race altogether, it seems to me that the interests of the large non-official community, whose exertions have made India commercially what it is, merit the highest consideration in dealing with any question which vitally concerns them. I do not by any means ignore our duties to the vast Native population. In that respect none of the officers of Government have ever been wanting; but the performance of such duties is, and ought to be, perfectly compatible with the due recognition of the high claim to consideration of their interests, which the efforts of Europeans towards the development of the country have created.

13. I consider that the principle of the Bill is unjust towards Europeans, *firstly*, because it withdraws from them a privilege which, as a matter of fact, and of right, they have always enjoyed—the privilege of being tried by Europeans. There is no doubt that the possession of such a privilege has been, and is, highly valued by all Europeans in the country. There is absolutely no evidence that Europeans by their acts have done anything on account of which such privilege should be withdrawn; it is incontrovertible that Europeans are entitled to retain their privilege unless they choose to waive it, and the retention of that right was guaranteed to Europeans at the time of the passing of Act X of 1872. I need adduce no arguments on these points. Upon none of them is there any doubt, and the compromise which was entered into in 1872 is on record in the debates which took place on the Act of that year. There can be no doubt that the non-officials then agreed to accept the proposals of Government for extending the powers of magistrates over Europeans, on the distinct understanding that such magistrates or justices of the peace were to be European British subjects.

14. *Secondly*, the principle of the Bill is unjust towards Europeans, because it subjects them to a system of judicial administration which for good and sufficient reasons they distrust.

15. Europeans make no special complaint against the present system of judicial administration, or, at all events, they accept it, with all its defects, as the best system which, under the circumstances of the country, we can devise. But they are not prepared to accept a change which will place them judicially under officers whom they certainly do not trust as they do their own countrymen, and to whose exercise of jurisdiction over them they strongly object.

16. The objections which they entertain are of two kinds—*first*, with reference to the Native officers themselves on whom it is proposed to confer jurisdiction over Europeans; *secondly*, with regard to the consequences likely to result, so far as Europeans are concerned, from the presence in districts of

Native officers armed with powers to try European British subjects. It cannot be denied that Natives generally are not so trustworthy as Europeans. This is most fully admitted by Natives themselves, who, I have no hesitation in saying, prefer to have their cases, when possible, tried by European officers. On the impartiality of European officers, the great body of the people most thoroughly rely; they have not the same confidence in the unswerving fairness of their own countrymen. The reason for the existence of this state of feeling is not far to seek. The training of Natives from their childhood, the enervating influence of the zenana on their up-bringing, early marriage, a low moral standard resulting from caste distinctions, and the influence of centuries of subjugation, all tend to hinder the development in Bengalis of those manly and straightforward qualities which, under other conditions, are found in Englishmen. A Bengali's first idea of duty, as I have been told by one of themselves, is to please his superiors, not to satisfy his own conscience; and in any difficulty his moral weakness, not his moral strength, is conspicuous.

17. What reasons then, are there for supposing that in intricate questions in which Europeans are concerned (and we are assured that such cases generally are complicated and difficult)—what reason is there for supposing that Native officers will show any higher qualities than those which they exhibit under other difficult circumstances? There is no reason, and on this account Europeans strongly object to be placed under them. They see their weakness and they distrust their impartiality, especially when any question of race or class prejudice is concerned.

18. I do not wonder at Europeans entertaining objections to any such change as is proposed. I am quite sensible of the progress which has been made in the education of the Natives of India. I have had under me for years a staff of Native magisterial officers who have performed their duties most creditably, and whose exertions I have had pleasure in acknowledging; but I am not on that account prepared to say that these officers were fitted to perform satisfactorily the duty of trying Europeans accused of criminal offences in the mofussil. And when I see of late years such active manifestations of race dislike as are chronicled in the Native papers, I am all the more inclined to attach weight to the views held by Europeans, that justice might not be impartially administered to them by Native officers.

19. It is further alleged that the particular danger to which Europeans in the mofussil are exposed is the institution of false charges, and that this danger would be very materially increased, were the power to try Europeans made over to Native officers. On this point I entertain no doubt whatever, and it may safely be predicted that, whatever might be the merits of a Native magistrate entrusted with the powers proposed to be conferred, the litigious enemies of any European in a district would feel encouraged to accuse him, in the hope that their efforts might be attended with more success than would probably result when such charges were tried by Europeans.

20. This danger from false cases is a very real one. About 10 in every 100 police charges now preferred are declared by magistrates to be deliberately and maliciously false. This is of itself alarming; and when it is borne in mind that in only 18 per cent. of such cases is any effort made to bring the malicious complainants to justice, it will easily be understood with what impunity such charges may be preferred.

21. It is difficult for official Europeans, protected by their position from many annoyances and attacks, to fully realise the dangers to which their non-official countrymen in the mofussil are often exposed. But such dangers are none the less real because they are not easily and to the full extent appreciated by those who are not exposed to them. I have no hesitation in expressing my belief that, in districts with Native magistrates vested with the powers of trying Europeans, these dangers would be very largely increased. With a Native magistrate acting as head of the district police, with powers to direct inquiry into, as well as to try, charges against Europeans, and believed, rightly or wrongly, to be not emancipated from race prejudices unfavourable to the aliens in his district, it would be strange if false cases did not increase, and if methods of judicial harassment of Europeans were not much more frequently resorted to than at present. To subject European men and women to the probability of such harassment by the adoption of the principle of the

Bill would inflict on them, in my opinion, a grave injury, and give rise to more serious political dangers and anomalies than arise under the present system of judicial administration.

22. Thirdly, the principle of the Bill involves injustice to Europeans, inasmuch as, while it contemplates the bestowal on certain selected classes of Natives of jurisdiction which they never as a body possessed, it deprives a large number of European officers and non-officials of powers which they have hitherto exercised. In future no European, who is not of the selected classes mentioned in the Bill, will be eligible to act as justice of the peace, and those Europeans who have hitherto been exercising the powers of a justice, will be disqualified from acting in that capacity. I see no justification for such a procedure. The number of Europeans who have hitherto been exercising those powers is by no means inconsiderable; and to deprive experienced and capable European officers of the jurisdiction in the case of European British subjects seems to me unjust, and tends to create administrative difficulties, the removal of which is one of the chief objects of the Bill.

23. Not only, however, does the adoption of the principle of the Bill involve injustice to Europeans, but its detailed provisions are at variance with the principle itself, and create distinctions amongst classes of Natives, which they may well style unfair.

24. As stated above, the Bill proposes to remove at once and completely from the Code every judicial disqualification which is based on race distinction. If this is the principle of the Bill, why are other privileges of Europeans—privileges which they enjoy undoubtedly by virtue of race distinction—left untouched? It seems to me, for example, much more anomalous that a European should be allowed to choose his court of appeal, than that he should be compelled to waive his right to be tried by his fellow-countrymen.

25. As regards the Natives who are to be empowered to try Europeans, I cannot see that the provisions of the Bill are logically defensible. The Bill divides the Native officers practically into three classes—*first*, covenanted civilians who have obtained their appointments by competition in England; *secondly*, nominated members of the Civil Service; *thirdly*, assistant commissioners in non-regulation provinces. I exclude cantonment magistrates, as we are told that natives will not ordinarily be appointed to such posts.

26. This classification practically announces the fact that the vast majority of the Native officers, viz., all who are in the regular Uncovenanted Service, are not at present fitted for the exercise of the powers of trying European subjects; that is to say, that race disqualification in the case of all members of the Uncovenanted Service in regulation provinces is to continue, and that only in the case of a few selected members of the Covenanted and Uncovenanted Service is such race disqualification to be withdrawn.

27. I can understand a proposal which maintains the existence of race disqualification on the part of all Natives to try Europeans, or which confers on all Native judicial officers jurisdiction in such cases; but I fail to see any consistency in the principle of a Bill which, while professing to have for its object the immediate and complete removal from the Code of all race disqualifications, denies to the great majority of Native officials the abolition of such disqualifications, and practically confers new and extended jurisdiction on a comparatively small number of their countrymen.

28. This appears to me to be a most important admission of the existence of judicial disqualifications, based on race distinction on the part of the majority of Native officers; and it may be well to inquire in what respects this race disqualification has been removed or modified in the case of the classes selected for the exercise of the jurisdiction contemplated by the Bill. I begin at the bottom of the list—

(a.) Cantonment Magistrates:

I have remarked above that these offices are not intended to be held by Natives. If Natives are fit to try European officials and non-officials of every class, I hardly see why, logically, they can be pronounced unfitted to try European soldiers. Politically, there are very strong objections to Native cantonment magistrates trying offenders of this class, and these objections all resolve themselves into one—the existence of race distinctions. If a Native officer is not to be appointed a cantonment magistrate, and try European soldiers, on account of political (which

are really race) objections, on what principle of consistency can it be affirmed that Native officers are, in spite of the existence of race distinctions, competent to try European civilians? On what principle of fairness can it be proposed that a Native covenanted civilian should be appointed magistrate of, and vested with powers to try Europeans in, the district of Patna, but that, on account of political (which are really race) objections, he should not be appointed cantonment magistrate or sub-divisional officer of Dinapore, six miles from the head-quarters of the Patna district?

This practical exclusion of Natives from the post of cantonment magistrates is, to my mind, a most convincing admission on the part of the framers of the Bill as to the necessity of retention of judicial race disqualifications.

(b.) Assistant Commissioners:

(c.) Members of the Native Civil Service:

In what respects have the race disqualifications attaching to members of the Uncovenanted Service been modified or removed in the case of these two classes?

In the case of assistant commissioners, these officers are actually members of the Uncovenanted Service, and there is nothing to prevent a deputy magistrate in Bengal from being employed as an assistant commissioner in Assam. In regulation districts, it is supposed that judicial procedure is more elaborate, and supervision more close, than in non-regulation provinces, where the system is more rough-and-ready, and officers more left to themselves. But, according to the principle of the Bill, the regulation deputy magistrate is to have no jurisdiction, while the same officer, as non-regulation assistant commissioner, is to be invested with powers to try Europeans, under circumstances and in districts where there are fewer safeguards against abuse of his authority.

The officers of the Native Civil Service come from the same classes as those from which the Uncovenanted Service is recruited. They have the same race feelings as those of their brethren of the latter service, and save that they are not so experienced or so hard-working, there is no difference in respect of race qualification or disqualification between a deputy magistrate and a member of the Native Civil Service under the Statute 33 Vic. cap. 3.

(d.) Covenanted Civilians:

Between these gentlemen and those in the Uncovenanted Service, there is this difference—that the former are more highly educated, and have been for three or four years at most resident in England. Are these circumstances sufficient to do away with, or radically modify, the race distinctions which exist between members of eastern and western nations? I hope not; for, if the contrary were the case, essential characteristics of western civilization must be very superficial and unreal when they can be communicated to orientals within the short period of a three or four years' residence in a foreign country. That the gentlemen who are members of the Covenanted Civil Service have acquired some of the habits and modes of thought of Europeans, I freely admit; but my experience compels me to deny that, by their short residence in Europe, they have acquired the essential characteristics which remove or radically modify the race feelings common to them with all their educated countrymen, so as to enable them to understand the customs and modes of thought of European men and European women.

29. If, therefore, there is practically no difference as regards race qualifications or disqualifications between Native members of the Uncovenanted Service and statutory civilians and assistant commissioners, and if the only distinction between them and covenanted civilians is more superficial than real, on what principle of fairness to Natives are judicial disqualifications based on race distinction to be removed from some, and retained with reference to other classes of Native officials? What practical benefit to Native officials, or to the judicial administration, will result from the appointment of these few selected officers, without reference to the existence of race disqualification?

And on what principle of justice to Europeans is jurisdiction to be conferred on these small classes of native officials who are, in all essentials, as disqualified by virtue of race distinction to exercise such jurisdiction, as the whole body of Native uncovenanted deputy magistrates to whom, under the Bill, the power to try Europeans is denied?

30. It will, I think, be admitted by all that a change in our judicial administration, which is so repugnant to the feelings of Europeans in India, should not be carried out without some overwhelming necessity being shown for its introduction. Does any such necessity exist?

31. It has been abundantly shown that Europeans unanimously condemn the principle of the Bill; and in spite of the violent and virulent manner in which the introduction of the measure has been demanded by the Native press, I do not believe that the great majority of the inhabitants of the country wish for the measure at all. It is difficult to ascertain the views of the people on this point; for, when any appearance of want of so-called patriotism is visited by relentless social persecution, as in the case of Rajah Shiva Persad, there are very few Native gentlemen who will hesitate to conceal their real opinions, and outwardly to commend, while inwardly they condemn, the introduction of the Bill.

32. The body who do wish for the introduction of the Bill are the political agitators of the press and their followers, and there can be no doubt that they look to the Bill as merely the thin end of the wedge, and the partial fulfilment of their hopes of obtaining increased power for Natives, their ultimate object being to get rid of Europeans from important administrative posts. Of these agitators it may be said that, if the language in which they have demanded, nay insisted, on the introduction of the Bill, is any real indication of their feelings, or those of Natives generally whom they profess to represent, then no more convincing argument could be found in support of the danger of entrusting any jurisdiction over Europeans to those in whom race-feeling is so strongly, not to say virulently, developed.

33. Much stress is laid upon the proclamation of Her Most Gracious Majesty as conferring rights upon Natives of India to have the jurisdiction contemplated by the Bill. But it appears to be forgotten that such proclamation could give, and actually gave, no rights beyond those recognized by the law of the land; and it cannot be maintained that under any law had Natives of India the right to interfere with the privilege of the European to be tried by his own countrymen. I hold that the time for their interference with such privilege has not yet arrived, and that the law of the land in this respect should not be altered to remove a fancied grievance, and to gratify the political virulence of pretentious patriots.

34. That there is at present no administrative necessity for the introduction of the measure in these provinces at least, we have the assurance of the Lieutenant-Governor of Bengal; and it is superfluous for me to add my testimony to his, as to no inconvenience having, as a matter of practice, been experienced from the existing constitution of the judicial administration. Nor do I see any reason to anticipate in the future that such executive difficulty will arise for many years, as cannot be met without a change in the law of the land and in the fundamental principles of our administration. Such a remote difficulty, I think, may be dealt with in the spirit of those remarks made on another occasion by the mover of the Bill himself: "Sufficient for the statesman if he can grapple with the problem of the day; for the distant future he must leave posterity to provide."

35. The proposal to introduce the Bill has led to a display of acrimonious feeling on both sides, which is to be lamented. There is no appearance of such feeling subsiding or diminishing in bitterness, and there cannot be the least doubt that the change in the system of judicial administration, if carried out, will lead to consequences which must be disastrous to the best interests of the country. The mischief which has already been done cannot be undone; but it may, and certainly by passing the Bill into law will, be increased, and the feelings of exasperation which now prevail will be intensified. The breach in the harmonious relations between Europeans and natives, which was being gradually filled up, will be widened, and friendly co-operation between the two peoples in advancing the highest interests of the country will become difficult, if not impossible. The state of matters has even now

led to a feeling of insecurity, which has already led capitalists to be chary of investing money in schemes for the development of the country; and if this feeling spreads, the consequences to the country will be financially disastrous.

36. On the whole, therefore, I am opposed to the principle of the Bill and its being passed into law—

- (a) Because it contemplates the abolition of race distinctions judicially, while such race distinctions are allowed to remain untouched socially, morally, and politically;
- (b) Because such abolition of judicial race disqualifications, under such circumstances, is premature, and therefore not advisable;
- (c) Because the withdrawal of the privilege of being tried by their own countrymen is unjust towards Europeans, and opposed to the conditions of our occupation of the country—
 - 1st—in ignoring their claim to retain a privilege which they have always enjoyed, and which was guaranteed to them in 1872;
 - 2nd—in subjecting them to the jurisdiction of officers whom, for good reasons, they do not trust as they do their own countrymen, and in whose impartiality and freedom from race feeling in the administration of justice they do not believe;
 - 3rd—in depriving a large number of European officers of the powers which they have all along exercised;
- (d) Because the detailed provisions of the Bill are at variance with its principle of immediate and complete abolition of race distinctions;
- (e) Because the partial bestowal of jurisdiction on some classes of Natives who are equally fit (or unfit) with the selected officials to exercise such jurisdiction, is logically and practically indefensible;
- (f) Because the selected classes of officials are not in reality more free from the influence of race feelings than those who, by the provisions of the Bill, are declared unfitted to try Europeans;
- (g) Because there is not at present any administrative necessity for the change, and because there is no probability of any such necessity arising for years;
- (h) Because the introduction of the measure is not desired by the great body of the Natives, but only by a few political agitators amongst them, and will confer no real benefit on Natives at large;
- (i) Because the adoption of the principle of the Bill, and its being passed into law, will widen the breach already existing between Europeans and Natives, and will result in consequences disastrous to the best interests of the country.

I have, &c.
(Signed) J. MONRO.

LETTER No. 868G, from the MAGISTRATE of JESSORE to the COMMISSIONER of the PRESIDENCY DIVISION, dated Jessore, the 19th April 1883.

IN reply to your No. 32JJ of 17th instant, I have the honour to inform you that I do *not* consider it to be expedient to give to native Civilians criminal jurisdiction over European British subjects.

2. Hitherto no administrative inconvenience of any kind has arisen in this district from Native magistrates not having criminal jurisdiction over European British subjects. Jessore has for nearly a century been an indigo district, and at one time there were many European planters in it, and there are still several. As long as a European magistrate is kept in this district, no European British subject could possibly escape trial for an offence. I may

say that, in an experience of Jessore extending at intervals over a period of 14 years, I never heard, either from European or Native, a whisper of discontent or complaint of any administrative inconvenience of the kind. The same remark applies to other districts of Bengal, of which I have been magistrate and collector, and where there are non-official European residents.

I have, &c.
(Signed) J. BARTON,

LETTER No. 756, from the MAGISTRATE of MOORSHEDABAD to the COMMISSIONER of the PRESIDENCY DIVISION, dated Berhampore, the 21st April 1883.

With reference to your No. 11JJ, dated 2nd April 1883, I have the honour to inclose copies of reports by the district superintendent of police and my sub-divisional officers on the Bill for amending the Code of Criminal Procedure.

2. The district superintendent and Mr. Beames are both opposed to the measure, and their principal arguments amount to this, that the Natives are not fitted for the power proposed to be given to them, and I quite agree with them in this, that if Europeans could be tried by native magistrates, it would be impossible to feel sure that race prejudices and an inclination to flaunt a temporary superiority would not interfere with the due administration of justice.

3. The sub-divisional officer of Jungipore thinks the Bill should be passed, but his only reason seems to be that it would "affect merely an infinitesimal portion of the public, and the jurisdiction would be limited to a very selected few," an argument which would be full of weight if he had used it to show that no change was necessary.

4. The sub-divisional officer of Kandi would pass the Bill, because if a Native is fit to be in the Covenanted Civil Service, he is fit to exercise these powers.

5. For my own part I object to the Bill as unnecessary and dangerous.

6. I have had many years' experience of districts in which European British subjects have been comparatively numerous, and have never known any in which any inconvenience would have arisen if the magistrate of the district had been a Native. In point of fact, the magistrate of the district hardly ever tries cases himself. He has no time to do anything of the sort, and as regards actual necessity, it would be almost more reasonable to enact that a district magistrate should *not*, than that he *should be*, a justice of the peace.

7. During the whole of my service (and I have been much in European districts), I only remember one district in which I have tried European British subjects, and then it was as joint-magistrate. That district was Chittagong, and the defendants referred to were mostly English sailors of the lowest kind, to keep whom in check it was considered necessary to have English police, though only two were employed. I should be very sorry to try the experiment of having only Native magistrates to try these men, without very largely increasing the English police force. The danger would be extreme.

8. There *is* such a thing as moral power; an English magistrate, as such, has a power over a low class Englishman which no native magistrate could ever have; and no Native civilian could ever, in my opinion, be safely sent as magistrate of Chittagong, unless he had an English joint assistant, or deputy; that is to say, there would be, as much administrative inconvenience in this regard, if the Bill were passed, as there may be now.

9. It is true that the present Bill only contemplates giving the power absolutely to Native members of the Covenanted Civil Service, who become

district magistrates (sessions judges may be taken for the purposes of this letter as being included in the term), but it also gives Government power to include others. And my experience of the Native Civil Service (under Statute 33 Vic., cap. 3) tells me that, as regards this branch, the power would be most dangerous. As regards cantonment magistrates, I can scarcely conceive a more dangerous enactment. It may be said that the powers would not be lightly given; but I am afraid that the matter would drift into one of form and that powers would be given in time almost as a matter of course.

10. It is also said that it is not contemplated going any further; but though that may be the intention now, it is quite possible, nay probable, that future Governments may refuse to be bound by present declarations, and that Native clamour may induce the further extension of the present Bill to all magistrates, which would have a most calamitous effect.

11. As matters stand at present, the parties most immediately affected are the European British subjects, and they have expressed in the most decisive manner their objection to the measure. Their opinions are deserving of most earnest attention. They, if they work well with the authorities, are of the greatest assistance to district officers in many ways; if they are alienated (and I can conceive of no more effectual way of alienating them than this Bill), they would be the cause of the greatest difficulties; and I can see no object in depriving district officers of their often invaluable assistance for the purpose of getting over a difficulty that has never been felt.

12. The arguments that district officers, when Natives, would lose prestige because they could not try cases that a subordinate could, is, I think, untenable. They, as a rule, never do try cases, and certainly no district magistrate ever adds to his prestige by trying cases, or loses it by not trying them.

13. If, in future years, it should be found that the present state of the law causes grave inconvenience, then will be the time to amend it; but it is a pity to alienate a powerful body of subjects, to whose enterprise and capital a large part of the prosperity of the country is due, for the sake of an idea.

14. The Bill has already done an incalculable amount of mischief by rousing race prejudices (on both sides) that were gradually dying down. It will be long before this is remedied, even though the Bill were withdrawn; if the Bill were passed, it would simply be perpetuated.

15. I may add that the distrust of Native magistrates is not confined to Europeans. Very often (and I think all other magistrates could say the same) I have had petitions from Natives to transfer their cases to a European magistrate, because they felt more sure of obtaining justice. If, then, this is the feeling where there are no race prejudices, what would it be in the contrary case?

16. I repeat, then, that I think the Bill unnecessary and dangerous. As to its getting rid of an anomaly, it should first be considered whether that anomaly is inconvenient. I do not think it is, and I certainly think that there are many other anomalies which might, with great advantage, be first attacked. There are numerous anomalies (*e.g.* exemption from attendance in civil courts granted to natives, but not to Europeans; indulgences to Native women, which are never granted to their European sisters), which might better be attacked than the one now spoken of, which, as far as my experience goes, has never caused the slightest difficulty, nor seems to me likely to do so.

I have, &c.
(Signed) H. MOSELEY.

LETTER, No. 106, from the DEPUTY MAGISTRATE, CITY MOORSHEDABAD, to the MAGISTRATE of MOORSHEDABAD, dated Lalbagh, the 11th April 1883.

IN reply to your circular No. 635 of the 7th April, I have the honour to submit the following.

The first objection which forces itself on one is that the jurisdiction over Europeans is to be taken away from uncovenanted magistrates, who have

hitherto exercised their powers in this respect to the entire satisfaction of the public, and given to members of the Native Civil Service, who are not better qualified by education and training than the European members of the Uncovenanted Service, and who, in consequence of their nationality, are infinitely less capable of forming a correct judgment in matters in which Europeans are concerned.

2. I speak from experience when I say that cases in which Europeans are defendants and Natives complainants, require the most delicate handling on the part of the judge.

3. Take a case of assault, for instance. In cases where gentlemen of position and high principle are defendants, the matter is simple enough. The defendant is asked whether he committed the offence or not. If he admits it, or part of it, it remains only to give judgment accordingly, or after such examination of the prosecutor and his witnesses as may be thought necessary.

4. If, on the other hand, the defendant is a low-born European, who fights the Native with his own weapons, and denies the charge point-blank, it remains to be seen whose story is true; and in so doing, to allow for the habitual exaggeration and disregard for truth displayed by Natives in the criminal courts, and so with difficulty to sift the true from the false.

5. I myself would gladly forego trying such cases, for with the best intentions one may err, and the consciousness of the delicacy of the situation is productive of great anxiety.

6. Now, if I, a European, feel this, how much more awkward must a Native under the same circumstances feel, supposing him to be bent on performing his duty conscientiously and to the best of his ability.

7. He would know that if he made a false step, public opinion would be eager to charge him with injustice or malice, as the case might be, or he might think that, in convicting the European, his motives would be certainly attributed to race feeling, and this might make him err on the side of leniency to the European.

8. On the other hand, a European is secure against all this, and this natural independence of character would, in any case, render him more indifferent to the voice of public opinion than the Native.

9. Lastly, there is another objection which is paramount, and which, in the absence of all others, is, in my opinion, fatal to the amendment.

10. I allude to the case of a Native judge with strong race prejudices, or open to corrupt influences.

11. That there have been such is well known; that there will always be such is highly probable.

12. I have had very painful personal experience of judges of this sort, so that I am well qualified to speak on the subject.

13. In Rajshahye, in 1871, a civil suit was brought against me, for the alleged use of abusive language, by a mookhtear.

14. The feeling in the place against Europeans ran very high at that time, and every one, from the judge and magistrate downwards, was abused in the weekly papers in the most infamous and abominable language.

15. The plaint in the case just mentioned was filed in the court of the moonsif of the place, and on going into the court to ask what date was fixed for the trial of the case, the moonsif's behaviour was so insulting that I felt certain I should never get justice there, and so I got the case removed to the court of the subordinate judge.

16. Here, though the judge himself was most courteous and polite, the pleaders were so insolent, and made so many open and offensive remarks, that to avoid insult I was obliged to get the district judge to take the case up and try it himself.

17. Twenty eight witnesses were cited to perjure themselves on this occasion by the prosecutor, and men I had hitherto looked on as highly respectable, and treated with habitual courtesy and kindness, came into court and lied as to the manner born.

18. The judge's experienced eye saw through them from the first, and in dismissing the case gave me permission to prosecute the complainant for bringing a false charge.

19. The next case was in Gya, where I was prosecuted civilly for a legal act done by my predecessor.

20. The suit was dismissed by the subordinate judge, on the grounds that the act was legal, in the first place, and that, secondly, my predecessor, not myself, had done it.

21. No judge could well have given a different decision; but a judge hostile to Europeans might have made matters very unpleasant for me.

22. The last and most serious case was before another subordinate judge of Gya, in which I was prosecuted conjointly with one zemindar, by another rival zemindar, for giving the former possession, under section 530, Civil Procedure Code, of certain land and crops in dispute between them.

23. I was most ably defended by the Government pleader, and the last day before the Durga-pooja holidays, the judge informed the pleader that he was quite satisfied with the defence, and that he need say no more, and that he would give judgment after the holidays.

24. What was our astonishment when the judge came into court after the holidays, and gave judgment against us.

25. We appealed the case to the High Court, and for three years I was in the greatest anxiety as to the result; but the present Chief Justice, Sir Richard Garth, reversed the decision of the subordinate judge, complimented me on my action in the matter, giving me heavy damages, and seriously censured the subordinate judge for his conduct in the case. This judgment was printed and circulated by the Government of Bengal.

26. I am of opinion that the time has not come for Natives in the Civil Service, even much less for Natives in the native Civil Service and the Commission, to be charged with such tremendous responsibilities as are contemplated by this amendment.

27. In my Administration Report, I have also pointed out what a deterrent effect this amendment, if passed into law, would exercise on the in-flowing of European capital, and consequently what a disastrous effect it would have on the country itself.

I have, &c.
(Signed) H. B. BEAMES.

LETTER, No. 404, from the DISTRICT SUPERINTENDENT of POLICE, MOORSHEDABAD, to the MAGISTRATE of MOORSHEDABAD, dated Berhampore, the 11th April 1883.

HAVING been asked in your circular No. 635, dated the 7th instant, to give an expression of my opinion regarding the proposed amendment of the Criminal Procedure Code of 1882, so far as relates to the exercise of jurisdiction over European British subjects by Native magistrates, I have the honour to state—

1. That I am directly opposed to such a course being adopted.

2. Such a procedure would, I firmly believe from my 20 years' experience as a police officer, be used by the Natives as a means of annoyance and insult to European ladies and others.

3. I could quote innumerable instances which have directly come under my personal notice, in which utterly false cases have been brought against Europeans by the Natives, and in which, had they been tried by Native magistrates, they would not, owing to ignorance of European character, have received that justice which has been meted out to them.

4. As a police officer of some experience, I can candidly say that times innumerable have I been called up as a witness in different courts, and in some Native magistrates' courts have been subjected to cross-examinations, not only utterly irrelevant, but to questions simply put with a view to insult, which would never have been allowed in the court of a European.

5. If Native character is so opposite to the European—the Natives do not mix with the Europeans; the European officials are compelled to study the Native character; the Natives, on the other hand, have neither opportunity nor inclination to study the character of Europeans—that, in my opinion, to put such a power in the hands of a Native, as to allow him to try a European, would be dangerous in the extreme; would lead to many complications; would, in a district where there are many non-official Europeans, paralyse trade, inasmuch as, with the prospect of being hauled up in a totally false case before a Native utterly ignorant of European manners, customs, character and habits, would induce many Europeans to give up their business rather than submit to such an indignity.

6. Furthermore I see no necessity for the measure. The ordinary Native criminal would far rather be tried by a European magistrate. The Europeans so far have been tried only by Europeans, and the European has so far been allowed the right to demand being tried by his countrymen; why then alter this? I do not believe, on the one hand, that a Native would wish to try a European any more than the European would wish not to be tried by the Native.

I have, &c.
(Signed) A. ANLEY.

LETTER No. 238-12M, from BABOO SARADAPROSAD SARKER, SUB-DIVISIONAL OFFICER of Kandi, to the MAGISTRATE of MOORSHEDABAD, dated Kandi, the 18th April 1883.

WITH reference to your circular No. 635, dated the 7th instant, I have the honour to report that the vesting of the power to a certain selected class of Natives has not created, among the native community, the same feeling of rejoicing as that of agitation among certain European quarter. The rule of the admission of Natives into the Indian Civil Service has secured, for some selected few, with powers to hold higher offices for purposes of administration. The gradual increase of social connection between European and Natives in this country necessitates the vesting, in the same officers occupying highest posts in a district, with jurisdiction over both classes. When the privilege of admission was given to hold such posts to Natives, I do not consider that any feeling of race distinction ought to be allowed to stand. If the officers be considered efficient for every other work, why they could be considered inefficient for some special work? The men who are now proposed to be vested with the power have got special training, and their number is very few, and so they are the fit object for a trial; and if they prove inefficient, it lies in the power of the legislature to withdraw it. "A breathe can make them as a breathe has made" (*sic* in original).

LETTER No. 142, from BABOO JUGGO BONDHU BHATTA, Deputy Magistrate of Jungipore, to the MAGISTRATE of MOORSHEDABAD, dated JUNGIPORE, the 13th April, 1883.

I HAVE the honour to acknowledge the receipt of your letter No. 635, dated 7th instant, calling for an early expression of my opinion on the Bill drafted to amend the Code of Criminal Procedure of 1882, and in reply to submit as follows:

2. So much has of late been said and written on the subject that any opinion I might offer will simply be of no value. The Bill has been discussed in and out of the Imperial Council, it has been made the subject of debate at meetings held throughout the length and breadth of India, it has been commented upon by newspaper editors and political critics both here and at

home, and was at last brought on the *tapis* in the noble House of the Peers of Great Britain. The sum and substance of the discussion, it appears to me, is that the Natives of India look upon the provision of the Bill as just, and such as Government ought equitably to concede to them. The oppositionists, on the other hand, think it unsafe and imprudent to jeopardise the safety of the person and property of British-born subjects, by entrusting it to the hands of Natives. But, considering the facts that the measure proposed by the Government of India will affect merely an infinitesimal portion of the public at large, inasmuch as the exercise of the jurisdiction is to be limited to a very selected few, it appears to me the Bill ought not to be objected to, but passed into law.

LETTER No. 888, from the MAGISTRATE of KHOOONA, to the COMMISSIONER of the PRESIDENCY DIVISION, dated Khoolna, the 23rd April, 1883.

I HAVE the honour to reply to your memorandum No. 11JJ of the 2nd instant, desiring me to express my opinion upon the subject mentioned in the letter No. 1518 of the 27th March last, from the Officiating Secretary to the Government of Bengal, to your address (Bill to amend the Code of Criminal Procedure, &c.).

2. I beg to state that, for the following reasons, I am distinctly opposed to the Bill, both as to its principle and on account of the absence of any administrative ground, either in the present or the near future, for a change which is so serious and so obnoxious to those most concerned.

3. The "Objects and Reasons" of the Bill are stated to be solely the removal from the Code of Criminal Procedure of anomalous distinction and all judicial qualifications arising from merely race distinctions. It appears to me that an uniformity of the kind aimed at is not desirable, but that rather, as far as possible, special provisions should secure to distinct races the opportunity of being tried by those of their own race. The principle of the Bill is, in my view, the opposite of what it should be.

4. I consider that the principle followed in the existing procedure, of allowing European British subjects to be tried only by those of their own race, should not be departed from, unless it is shown to produce public inconvenience or injustice.

5. As regards the question of administrative inconvenience arising in the present or future from the exclusion of native covenanted civilians from the power of trying European British subjects on criminal charges, I can reply, as regards the district now in my charge, that there is at present no native covenanted civilian in it; but if hereafter one should be placed in charge of the district, not having the power to try Europeans, I feel confident that no substantial inconvenience will arise, since the district is connected directly by railway with other districts, in one or other of which there will always be a justice of the peace to whom any European may be sent for trial, or who may come to this place for the purpose.

6. I think that some slight alteration might be made, authorising the intermediate detention of an European British subject in the jail of the district of the magistrate who issues the warrant; but, excepting any such alteration, I would deprecate any change in the existing procedure.

I have, &c.
(Signed) W. CLAY.

LETTER from BABOO RAM SHUNKER SEN, Deputy Magistrate of the 24-Per-gunnahs, to the COMMISSIONER of the PRESIDENCY DIVISION, dated Alipore, the 26th April 1883.

WITH reference to your memorandum No. 11JJ, dated the 2nd April last, I have the honour to submit in brief my views on the Native Jurisdiction Bill.

First as to the principle of the Bill :

I think that, in introducing the present Bill, the Legislature proposes

(a) 3 and 4 William IV, clause 85, section 87.

(b) Parliamentary Discussions in 1853, for throwing appointments in the Civil Service open to competition.

(c) 21 and 22 Victoria, clause 106, section 32.

(d) Her Majesty's Proclamation issued in 1858.

partially to carry out the broad principles laid down in the various Acts of Parliament as noted in the margin, enunciating the fact that "fitness was henceforth to be the criterion of eligibility," to the public service, and that distinctions of race and creed were to be ignored. As a result of this policy, several Natives of India, trained under the system of high education introduced in the country in the reign of Lord William Bentinck, which was improved

upon under the Great Education Despatch of 1854, secured for themselves appointments in the Covenanted Civil Service, in open competition in England; and it is with a view to invest these gentlemen with the powers which, under the Criminal Procedure Code of 1872, re-enacted in 1882, they cannot at present exercise over European British subjects in the mofussil, that the present Bill has been mainly brought. The legal disqualification under which they at present labour has been regarded by the educated portion of my countrymen as opposed to the declared policy of the Imperial Legislature, and the removal of the ban will tend to prove that the Indian Government is no longer willing that it should continue in the Statute-book. The fitness of the native Covenanted Civil Servants being admitted, there is no reason why, as district magistrates and sessions judges, they should not be allowed to try European British subjects, while in the subordinate posts they will share that privilege in common with their European compeers, when they have attained the requisite experience.

I cannot, however, speak with the same confidence regarding the Native Civil Servants appointed under the Statutory Rules, as, from the system of nomination at present in vogue I do not feel convinced that most of them possess the necessary qualifications to exercise the powers which the Bill proposes to invest them with.

2. Then, as to whether or not any administrative inconvenience at present exists from the exclusion of Native Covenanted Civil Servants from the power of trying European British subjects in criminal charges, I think that Government is in a better position to judge on this question than any outsider; but if, when the district magistracy of Jessore fell vacant, Government had to move the European magistrate of Bogra to make room for Mr. Dutt or Mr. Badshah, whose turn for a district magistracy had arrived; or if, when in consequence of Mr. Gupta's being sessions judge of Beerbhoom, a European criminal has to be tried at Moorshedabad, I would reckon such cases as causing not only administrative, but public inconvenience.

LETTER from the NAWAB ABDOL LUTEEF, C.I.E., Deputy Magistrate of Sealdah, to the COMMISSIONER of the PRESIDENCY DIVISION, dated Sealdah Police Court, the 20th April, 1883.

I HAVE the honour to acknowledge the receipt of your memorandum No. 11JJ, dated the 2nd instant, forwarding copy of a letter No. 1518J, dated the 27 ultimo, from the Officiating Secretary to the Government of Bengal in the Judicial Department, to your address, as well as a copy of the Bill No. 8 of 1883, being "A Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects," and asking me to report, for the information of the local Government, my views in connection therewith. The matter is one of great importance and difficulty, and cannot require too much of thought and deliberation. I have made most of the time allotted for the reply, and I trust that any deficiencies in this report may be excused.

2. The principle of the Bill, I take it, is this: that the fitness of a judge to exercise jurisdiction in criminal cases should be tried, not by his race, but

by his personal qualifications. The Sovereign and the Parliament of the United Kingdom have oft declared their intention to remove all distinctions of race or creed in the matter of all offices under the British administration of India; and every rule or regulation which forbids a Native of India to exercise any portion of the duties of his office merely on account of his nationality is, in my humble view, an infringement of the spirit, if not the letter, of the said declarations of the highest authorities in this Empire.

3. It has been said that such anomalies are common enough in India, where various classes of the native communities have peculiar and personal laws and privileges; but when all these native privileges are summed up and analysed, it will, I submit, be plain that none of them entitles a Native to select the tribunal in which a case in which he is concerned should be tried. The personality of the judge or magistrate is a thing wholly out of the pale of native privileges, and the so-called privileges are mostly the result of the declared policy of Government not to interfere with the religion or social customs of the people of this country, which latter are again often intimately connected with their religion. Further, it will be found that few, if any, of these privileges are recognised in the criminal procedure, however much they might be in the civil procedure.

4. The change which the Bill proposes to introduce will affect only a small fraction of the privileges already possessed by European British subjects in criminal matters,—for instance, it would leave unaffected their right of appeal against every sentence, and their right to apply to the High Court for a writ of *Habeas Corpus*, which are very substantial advantages, from which the Natives of India are debarred, and of which the former is not enjoyed by European British subjects in any other country, inclusive of their own.

5. I believe there is no country whose laws and regulations would be deemed worthy of imitation, where the jurisdiction of judges in civil or criminal cases is circumscribed by reason of their place of birth or their nationality. Such distinctions, I believe, are not recognised in the other colonies of the British empire.

6. I may here be permitted to remark that, to a certain extent, the Bill under consideration only seeks to remove invidious distinctions of recent growth. Before 1869, Government had the power of appointing any person, whom they considered fit, as justice of the peace in the mofussil. And every justice of the peace, of whatever nationality, had, by virtue of his office, jurisdiction to try European British subjects for petty offences, and to commit them to the High Court sessions for serious crimes. I myself have held the appointment of a justice of the peace for Bengal, Behar, and Orissa, and, as such, I have tried at the Alipore Police Court European British subjects for many years. In 1869,* it was enacted

* Act II. of 1869.

that only Europeans or Covenanted Civil Servants should hold the appointment of justice of the peace in the mofussil. The Native members of the Covenanted Civil Service would still, however, have continued to be eligible for the appointment of justice of the peace, and the exercise of jurisdiction over European British subjects in such capacity, but for Act X. of 1872, by which it was further enacted that only Europeans who were justices of the peace could try or commit European British subjects.

7. That Act, whilst it took away from the Native members of the Covenanted Civil Service the eligibility for trying European British subjects in the official capacity of justices of the peace, increased the jurisdiction of certain European officers in the mofussil for the trial of European British subjects. It was admitted on all hands, at that time, that it was a great administrative inconvenience that European offenders in the mofussil could not be speedily and conveniently tried within a reasonable distance of time

† *Vide* Proceedings of the Legislative Council of India, dated 16th April 1872.

and space. “There is, no doubt,” said Mr. Fitz-James Stephen,† “one way in which the present system is a great and

“ real grievance to the Natives. It extends practical impunity to English wrongdoers.” “The difficulty,” said Mr. Barrow Ellis, “attending the conviction, in the mofussil, of offenders, being European British subjects, was admitted to be a great evil, and the question was how to remove the evil without risk of injustice being done to those concerned.” “The exigencies of the time,” said Mr. W. Robinson, “clearly call for an extension of the jurisdiction of up-country justices of the peace in respect to the trial and punishment of European British offenders; and the Committee adopted this view.” His Honour the Lieutenant-Governor of Bengal (Sir George Campbell) remarked, during the course of the said debate, that “he entirely acquiesced in the general view of the case which was put forward by the hon. member in charge of the Bill. As he truly stated, the real and practical evil was that, at present, Europeans in the mofussil committed petty offences with impunity. That had been found to be a practical evil, and these provisions were designed to meet that evil as far as it was possible to meet it.”

8. The number of Europeans in the country has increased since 1872, and I venture to think that administrative inconvenience of the same description is sure to be felt in districts or divisions of districts which might be under the charge of native sessions judges or magistrates, whether as members of the Covenanted Civil Service or as members of the Statutory Native Civil Service.

9. To transfer the particular class of cases to subordinate officers of European nationality would produce administrative inconvenience of another character. To declare a superior officer disqualified from performing a part of his official functions, and relegate the same to a subordinate officer on the ground of a mere distinction of race or nationality, would substantially lower the prestige of the superior officer in his own eyes and in the eyes of the people at large, and would be well calculated to disturb the discipline of the administration, and diminish his usefulness as a public servant.

10. The Native members of the Covenanted Civil Service have so completely adopted the English habits of life and thought, that they may, for all practical purposes, be treated as European British subjects. Indeed the definition of the term “European British subject” in the Criminal Procedure Code is so artificial that the Native members of the Covenanted Civil Service can, without any great stretch of ideas, be brought in within the spirit of that definition. To the mass of the native public, these gentlemen are not distinguishable from the class of European British subjects as defined in the Act; and the executive and the legislature should also, in my humble opinion, on the question of jurisdiction, treat them as such.

11. There remains the question of the Native Civil Service constituted under the Statute 33 Victoria, cap. 3. The members of that service already suffer much in prestige and public estimation on account of the diminished salaries that they draw; and to exclude them as a class from exercising any jurisdiction over European British subjects would still more seriously diminish their prestige and usefulness. The Native Civil Service would in such case be hardly distinguishable, for many years to come, from the ordinary Subordinate Executive Service.

12. To retain the present race disqualifications would always hamper the Government in placing a native of India in charge of a district as magistrate, where there is no European joint-magistrate, or as sessions judge where there is no European assistant sessions judge. The Native members of the Covenanted Civil Service have, some of them, already attained rank as district magistrate and sessions judge, and in time the members of the Native Civil Service are also expected to attain similar rank in the Service. The inconvenience, therefore, to the public administration will go on increasing, unless the race distinctions are removed.

13. I may be permitted to add, in conclusion, that, so far as my own official experience is concerned, I have exercised criminal jurisdiction over European British subjects, as a matter of right, in my capacity of justice of

the peace for Bengal, Behar, and Orissa from 1852 to 1869, and in 1877, during my incumbency as officiating presidency magistrate for the northern division of Calcutta. I have also, since 1872, as police magistrate in the suburban courts of Alipore and Sealdah, exercised criminal jurisdiction in numerous cases over European British subjects, where they have waived their privilege of being tried by a European magistrate. I venture humbly to trust that, during the entire period of my long official career, no complaint has ever been made, much less substantiated, that there has been any failure of justice, in the case of any European sentenced by me, on account of his being tried by a Native magistrate.

LETTER No. 710JG, from the MAGISTRATE OF NUDDEA to the COMMISSIONER of the PRESIDENCY DIVISION, dated Kishnaghur, the 30th April 1883.

WITH reference to your memorandum No. 11JJ, dated 2nd April 1883, forwarding a circular of the Bengal Government regarding the Bill to amend the Criminal Procedure Code, I have the honour to forward the opinions of my sub-divisional officers, the joint-magistrate and senior deputy magistrate at the Sudder, which speak for themselves. The principle of the Bill is to remove an alleged anomaly and certain supposed administrative inconveniences that exist or hereafter are likely to exist. As regards the first, however, it seems to me that the proposed Bill, while removing such anomaly, retains various others which are of equal, if not of more importance. It vests Native civilians with powers that Native magistrates have hitherto never enjoyed, and which, in my opinion, they are not fitted for, while it debars, in future, uncovenanted European magistrates, a class of officers who are fitted for, and who I believe have proved themselves fit to be justices of the peace, from holding such powers. It, moreover, takes away a long-existing and deeply-cherished privilege of the European community, but in no way interferes with privileges and personal laws enjoyed by the Hindoos and Mussulmen; and finally, the effect of such measures is certain to create a feeling of insecurity in the minds of the European communities, and thereby in all probability considerably affect the investment of European capital, and arouse feelings of race-antagonism which cannot but be disastrous.

2. As regards the second point, I beg to state that, during the course of my long service, no administrative inconvenience has ever been experienced, nor do I think such is likely to occur. District magistrates, as a rule, never try original cases except in small outlying stations, and even in such there could, I take it, be no difficulty in appointing at least an uncovenanted European deputy magistrate with full powers, and with those of a justice of the peace. So far, then, from Native civilians being kept out of the larger and more important stations, the effect would be, if any, quite the reverse. Committals of Europeans to the sessions court are of such very rare occurrence (I cannot call to mind one such during my service of 27 years) that I scarcely think that such need be taken into consideration.

3. I fully concur with Mr. Ritchie that the right of Europeans should be at least respected as far as to ensure them a fair trial by the best judges procurable, but I differ from that officer in considering that Native civilians who have passed in England should be vested with powers to try *only* ordinary European cases. If they are not competent to try all European cases, I think it would be a great political mistake to bring about the results above-named merely for the sake of partially removing the anomaly.

4. The experience of Mr. Holmwood confirms that which I have from the first considered to be more than probable, viz., that Native civilians in England are not likely to be introduced into good society, and even if now and then so introduced, that they could not spare time from their studies to

become thoroughly acquainted with the social habits and customs of the people.

5. As regards other Native civilians, I agree with Mr. Ritchie that there exists no reasonable grounds for supposing that they are competent for these powers, and I concur with Baboo Rakhal Das Mookerjee that there are many deputy magistrates of experience and tried ability, who ought with better reason to be so vested, and that, so long as the latter are considered unfit, as they apparently are, I fail to see on what grounds the former are considered to be qualified.

I have, &c.
(Signed) W. V. G. TAYLER.

LETTER No. X. from the OFFICIATING JOINT MAGISTRATE, KISHNAGHUR, to the MAGISTRATE and COLLECTOR of NUDDEA, dated Kishnaghur, the 23rd April 1883.

WITH reference to your memorandum No. 586 JG, dated the 6th instant, forwarding a circular of the Bengal Government regarding the Bill to amend the Criminal Procedure Code, I have the honour to submit the following statement of my views on the points noted in the circular :

2. In the first place as to the principle of the Bill, Ought the privilege claimed by the European British subject, to be tried by his own fellow-countrymen, to be respected or not? I think it ought to be respected just so far as this, that he ought to be assured of as fair a trial—a trial as much in accordance with the spirit of English law out in India—as he would get if he were tried at home.

Can we assure him of such a trial at the hands of the Native magistrates included in the classes specified in section 1 of the Bill?

3. First come the members of the Covenanted Civil Service. These gentlemen have proved their superiority to the prejudices of their fellow-countrymen by breaking caste and going home; in England they have familiarised themselves with the practice and the spirit of English courts of law, and have become conversant with English manners and customs. On their return to this country they hold responsible positions in various districts, and in time are considered fit for promotion to the all-important posts of magistrate-collector and sessions judge. No stronger proof can be given of their character for probity and loyalty to English rule, and of the fact that they are thoroughly imbued with western as opposed to oriental ideas, than that the executive Government should be ready to entrust them with the functions of the posts which I have mentioned. I think an Englishman would be as fairly tried by one of this class as he would be by his own countryman, and that, as a class, they are fit to be vested with the proposed jurisdiction at the discretion of the local Government.

4. In giving this opinion, I am thinking of the ordinary class of cases in which an European is likely to stand as accused. There are other cases of rare occurrence, where both parties are Europeans, in which it is imperative that the judge should himself be an European British subject: such cases as indecent assault, assaults prompted by suspicion of a wife's fidelity, and matrimonial cases generally. There would be no difficulty in having these cases transferred to the file of the nearest European magistrate, or a proviso might be inserted in the Bill, to the effect that cases in which both parties are European British subjects should not be tried by a magistrate, other than an European British subject himself, except with the consent of the parties.

5. It may be said that by making this exception I am proving too much, and that, if it is admitted that a Native civilian is not sufficiently English in habit of thought to try all cases, he is not qualified to try any cases in which Europeans are accused. The experience of every European magistrate in trying men of another race teaches him that with an ordinary knowledge of

native habits and customs he can hope to do justice and give satisfaction to the parties in the great bulk of cases which arise out of the ordinary business of life, but that he is more or less in the dark in the exceptional cases which come before him, involving nice family and social questions. He is only too glad if he has the opportunity of handing over such cases to be tried by a co-religionist of the accused.

6. Coming next to the members of the newly-constituted Native Civil Service, I find none of the guarantees of fitness for trying European British subjects which exist in the case of covenanted civilians. They are nominated chiefly on the ground of birth, most of them have never left the country, nor have risen above caste prejudices; they have had no opportunity yet of proving their worth; their only experience of the administration of criminal justice is in the mofussil courts. I think it hardly possible for a magistrate, bred up in the atmosphere of these courts—the constant scene of wholesale lying, reckless imputation of motives, subornation of perjury, chicanery, and vindictiveness,—to understand the true spirit of English criminal law. I think that as a class, therefore, members of the new Native Civil Service should not be rendered eligible for investment with powers to try European British subjects.

7. Turning from the principle of the Bill to the policy and expediency of making it law, I fear that the race feeling, so deplorable in some aspects, which animates the classes who are most likely to figure in the courts as accused, would prevent them from respecting the jurisdiction of Native magistrates. As is well known, there is no European criminal class in the mofussil. The classes mentioned consist of (a) those of an inferior social position, such as railway *employés*, seamen, storekeepers; (b) planters and large employers of Native labour. Every severe sentence passed by a Native magistrate on a member of these classes would, I believe, raise a storm of that race feeling which it is so undesirable to stir up, and of obloquy against the unfortunate sentencing magistrate, while the same sentence passed by an European would, if grumbled at a little, be acquiesced in. In other words, I think the occasional lawlessness of independent Europeans can be far better controlled by the authority of members of their own race, than by giving jurisdiction to Natives of this country, and that the jurisdiction of the latter is open to the fatal objection that it would not command the respect of the accused.

8. Those who have been educated at our public schools, where the prefectorial system is in force, will understand the analogy when I say that, if the present Bill is passed, there is likely to prevail in places the same state of things which sometimes occurs when, by right of cleverness, a youthful and puny set of boys hold the position of præpostors or præfects. Their authority is defied by the big stupid fellows in the lower forms, who bully the little boys, disregard the punishments by which their youthful superiors attempt to re-assert their authority, and which have a tendency to be inordinately light or inordinately severe, and finally by open resistance cause the authority of the headmaster to be invoked.

9. Coming lastly to the question of administrative convenience. Looking back to the occasions on which I have had to try a European British subject, and considering what would have taken place if I had not been empowered as a justice of the peace, I can only recall two cases in which any administrative inconvenience would have resulted from the parties having to travel to a more distant court. In each case they would have had to travel about 20 more miles each way.

I have, &c.
(Signed) J. G. RITCHIE.

LETTER from BABOO TARINI KUMAR GHOSE, Deputy Magistrate of Nuddea, to the MAGISTRATE of NUDDEA, dated Nuddea, the 28th April 1883.

WITH reference to your memorandum No. 586JG, dated the 6th instant, and subsequent reminder, I have the honour to submit the following opinion on the Criminal Procedure Code Amendment Bill.

2. The principle of the Bill, viz., the removal of judicial disqualification based merely on race distinction, is one in consonance with the declared liberal policy of Government.

3. Natives who are thought fit to be appointed to the high office of a sessions judge or a district magistrate may be presumed to be fit to try European British subjects. Section 2 of the Bill, therefore, appears to be appropriate.

4. As regards the other Native officers mentioned in section 1 of the Bill, the investment of them with the power to try European British subjects is left to the discretion of the Executive Government, and thus there is little risk of that power being conferred on incompetent officers.

5. As to the question whether any administrative inconvenience at present arises, or is likely to arise in future, from the exclusion of Native civil servants from the power of trying European British subjects, I do not venture to express any opinion.

LETTER No. 242G, from P. G. MELITUS, Esq., the Assistant Magistrate of Kushtea, to the MAGISTRATE of NUDDEA, dated Kushtea, the 12th April 1883.

I HAVE the honour to acknowledge receipt of your memorandum No. 586JG, asking for an expression of my opinion on the Bill to amend the Code of Criminal Procedure.

The object of the Bill is to remove the alleged administrative inconvenience felt, or likely to be felt, from the exclusion of Native district magistrates and sessions judges from the power of trying European British subjects on criminal charges.

There are two questions on which my opinion is asked—

1. Is any administrative difficulty felt, or likely to be felt, under the present system?
2. Is the principle of the Bill good?

The second question, in my opinion, depends on the first: the negative of the first carries with it the negative of the second.

The Bill is prospective. There are at present only two or three Native officers in Bengal, who are in a position to be district magistrates and sessions judges, but it is said that in a few years the number will increase, and then the inconvenience will be felt.

There is a certain amount of inconvenience arising from the fact that all magistrates of sub-divisions are not empowered to try European British subjects; but as European officers may be, and as a matter of fact always are, appointed to districts and sub-divisions where charges against Europeans are likely to be at all numerous, the inconvenience is slight. The Bill, moreover, does not propose to remove this. The argument that Native civil servants are, under the present law, shut out from the advanced districts into which European capital has been introduced, does not support the principle of the Bill. These districts are sought after by European officers on account of the society; but a Native finds society wherever he goes, and it seems to me that no supposed benefit to the few Native officers concerned would be sufficient grounds for a material alteration like this in the law.

I do not see what difficulty can arise from the fact of a Native district magistrate being unable to try European British subjects. A district magistrate is not, as a rule, a judicial officer: in fact, it is my experience that he

tries as few cases as he possibly can. The joint or other European officer under him would be fully able to deal with all the charges against Europeans. It is said that there are many districts in which there is no joint-magistrate; but these are chiefly the backward districts in which there are no non-official Europeans or very few, and where there is small likelihood of European British subjects being charged with criminal offences.

With respect to sessions judges the case is different, and I admit that some little inconvenience might be felt by seekers after justice if a large proportion of sessions judges were Natives. As the law at present stands, some inconvenience is felt from the fact that a sessions judge's powers over European British subjects are limited to one year's imprisonment, and in serious cases the parties are put to the trouble and expense of going to the High Court. But charges of this kind against Europeans in the mofussil are, I believe, very rare, and hence the inconvenience is slight. I do not think that any serious additional inconvenience would be experienced if Native sessions judges remain excluded from jurisdiction over European British subjects, because—

First.—A sessions judge, who is himself an European British subject, could easily be appointed to districts where there are many Europeans.

Secondly.—The number of cases triable by a court of sessions, that is, which cannot adequately be punished with three months' imprisonment, and which do not require a heavier penalty than one year's imprisonment, must necessarily be few. The vast majority of charges against Europeans are of trifling offences, which can be disposed of by a justice of the peace.

Thirdly.—Except in the Sudder sub-division and the parts adjacent to it, it does not follow that the parties would be put to any greater trouble or expense in going to the next district than to the Sudder station of their own district. The people of Kushtea think far less of going to Pubna than to Kishnaghur; the people of Ranaghat would find it no hardship to go to Alipore; the people of Culna can more easily get to Kishnaghur than to Burdwan; and endless other instances might be given. Means of communication are easy now-a-days, at least in Bengal, and railways are being rapidly introduced into the backward parts, into Eastern Bengal, and Assam. Facilities for locomotion will be considerably increased by the time that any large number of Natives get to be sessions judges. Thus—

- (1.) There is very little administrative inconvenience in the law as it at present stands.
- (2.) The inconvenience is not likely to increase to any serious extent in the future so as to warrant a change in the law in the face of the strong feeling against it.

No doubt public feeling has been misled by the prevailing excitement. The general idea, so far as we can judge from its expression, seems to be that the new powers are to be conferred on all Native magistrates, and not only on Native civilians. But there is this much justification for the present agitation, that the Bill proposes to give these powers to the members of the Native Civil Service who are men of the same class, qualifications, and disqualifications as the Native members of the subordinate services.

There seems to me an essential difference between the Native members of the Covenanted and Statutory Civil Services. The former class have been to England, gone through a course of European training, and mixed more or less in European society in England, and at the stations to which they have been posted out here; so that they may fairly be supposed to have thrown off native prejudices, and to have acquired some knowledge of the habits and customs of Europeans. But there is no guarantee that members of the Native Civil Service will be free from the influence of native feelings and prejudices, or will have anything in common with European thoughts and feelings, so that they would not be in a position to form a correct opinion of the conduct and actions of Europeans.

The principal classes of Europeans outside cantonments, likely to be affected by the Bill, are (1) planters, (2) steamer captains, railway servants, &c., (3) loafers. Leaving out of consideration the last class, with whom a Native magistrate would probably be far more lenient than an European, we find that planters and railway servants have unanimously expressed their disapproval of the Bill. And I agree with them in thinking that a Native magistrate would be an unsafe judge of their actions. Native feeling is strong against planters, who have generally some sort of dispute with neighbouring zemindars and ryots, and I think there is danger of a Native magistrate with the very best intentions, but ignorant of the ways and habits of Europeans, being misled by the prevailing prejudice against them. As to railway servants, &c., they are a class with whom the educated Native can have no possible community of feeling. A Native magistrate with native habits and ideas would, I think, be hard put to fathom the thoughts and ways of the British guard or driver or skipper.

The other portions of the Bill need no comment. The above remarks apply to assistant commissioners in non-regulation provinces. A cantonment magistrate would naturally always be an European British subject.

I am thus of opinion (1) that the Bill is unnecessary; (2) that if it is to become law its operation, so far as regards Natives, should be limited to members of the Covenanted Civil Service only.

I have, &c.
(Signed) P. G. MELITUS.

LETTER, No. 105, from the ASSISTANT MAGISTRATE of MEHERPORE to the
MAGISTRATE of NUDDEA, dated Meherpore, the 27th April 1883.

WITH reference to your No. 586 J.G., dated 6th instant, I have the honour to report as follows :—

2. I regard the proposed amendment in the Code of Criminal Procedure with alarm and distrust.

The various arguments against it have been so clearly enunciated by the Lieutenant-Governor of Bengal, Sir James Fitz-James Stephen, Sir Louis Jackson, Mr. Evans, Mr. Miller, and others, that it would be presumption in me to reiterate them in my own language. It is sufficient for me to state here that every European and many Natives in my sub-division fully agree with me that those arguments are unanswerable; and as I have seen no attempt to answer them anywhere, I conclude that is the general opinion.

3. With regard to the proposed change as it affects my own sub-division and personal experience, I have the honour to add as follows :—

I have spoken with many of the European inhabitants of this district, who consist of clergymen of the Church Missionary Society and zemindars, and their opinion is unanimously against the Bill. The younger men among them are already seriously thinking of leaving this country and trying a new career in Canada or Australia. The older face the proposed change with steady and calm opposition, as likely to imperil the Empire and their own livelihood. The missionaries, after full consultation with the people, report that the general body of the public prefer a European to a Native magistrate, even in the trial of Natives, and that they regard this Bill, not as an act of justice to the Native members of the Civil Service, but as a personal blow at the status and privileges of an Englishman. My own experience bears this out. Not only have I received constant applications to try cases myself when they have been referred to Native magistrates, but objections have, on several occasions, been made to the trial of cases by the bench in which I personally preside.

These applications have been based on a fear of the miscarriage of justice, and I have uniformly rejected them as derogatory to the authority by which such benches were set up; but the existence of the feeling of mistrust among the people cannot be doubted.

With regard to administrative inconvenience, none exists. There are numbers of available European officers, and deputy magistrates are excluded in the proposed change. This sub-division, too, has always been under the authority of a European magistrate for political reasons, and it could never be safe to put it into the hands of a Native magistrate, however honourable and upright. There is such an utter disregard for truth, and such power of combination to bring false cases in this sub-division, that the few Europeans in the place would be utterly unable to stand against a succession of such cases, unless the magistrate was one who understood European motives and feelings intimately. I have been trained with some of the gentlemen who represent the Native Civil Service in India, as also with some of the unsuccessful candidates, and I can confidently state that they do not, and cannot, understand the moral standpoint of Europeans with regard to questions of insult, provocation, and the like, but above all with regard to women. I have seen a Native gentleman of the Service bring a European female of inferior rank—in fact a shop-girl—into the English law courts when he came to report cases, and show surprise that his English companions objected to associate with her on terms of equality. A Bayswater lodging-house and an occasional visit to an English theatre or music hall is not the best school for studying the morality and social characteristics of Englishmen; and, as to Englishwomen, it must be laid down once for all that, with the exception of a certain class, they are as a sealed book to the young candidate visiting England from this country. I admit that Indian noblemen and orators visiting England are admitted superficially to good English society; but, in my experience, the candidates for the Civil Service of India are invariably relegated to Bayswater lodging-houses, and see nothing but the worst side of London life. I have seen many Native gentlemen who have never been in England in their lives, much more capable of appreciating English character and entering into English views than the gentlemen who have gone to England merely to read for the Indian Civil Service.

It may, without exaggeration, be stated that where an English candidate works eight hours a day, a Native will work 16, and those who have seen the indefatigable perseverance of the Native candidates at their books—a perseverance which is absolutely necessary to their success, owing to the examination being carried on in a foreign tongue—will readily admit that they can have had little or no time to study English character and morality.

I have enlarged on this topic because it has fallen within my own observation and experience.

The argument of the injustice done to the Native members of the Service, as also that of administrative inconvenience, has been so thoroughly canvassed elsewhere, that I do not further enlarge upon it, except to state that, in my opinion, the trial of a fellow-creature is a heavy responsibility, and not a privilege, and that all those who seek it as a privilege show themselves, by that very act, incapable of judicial impartiality. Every prisoner has a right to the best judge procurable, and it cannot be pretended that Native civilians are as good judges of the motives of European actions as Europeans, and even were they as good judges, the fact that the European public object to their jurisdiction is enough to weaken their hands, bias their minds, and render them inferior to a court in which the prisoner has perfect confidence.

I have, &c.

(Signed) H. HOLMWOOD.

LETTER, No. 313, from BABOO RAKHAL DAS MUKHERJI, Deputy Magistrate of Chooadanga, to the MAGISTRATE of NUDDEA, dated Chooadanga, the 12th April 1883.

WITH reference to your memorandum, No. 586J.G., dated the 6th instant, endorsed on the Government letter, No. 1518J., of the 27th ultimo, on the subject of the exercise of jurisdiction over European British subjects on the part of the Native magistrates who are members of the Covenanted Civil Service, and of other officers, I have the honour to state that the principle of the Bill published by the Government of India appears to aim at the removal

of the invidious distinction between the European and Native magistrates, who are equally members of the Civil Service, as well as to remove the anomaly that, while Natives are invested with the highest judicial powers and functions, and admitted into the Covenanted Civil Service, they should still be held disqualified from being the justices of peace, or of exercising jurisdiction over European British subjects outside the presidency towns, where they at present exercise that jurisdiction. This principle is, no doubt, a laudable one; but I humbly submit whether all members of the Covenanted Civil Service, excepting perhaps one or two only, or the members of the Native Civil Service, constituted under the rules passed by the Government of India lately, would be competent enough to exercise jurisdiction over the Europeans in the interior, where too many cases would be instituted if once a door is opened for such institutions. The Indian Native Civil Servants are, as a body, all junior to many deputy magistrates in the line, and are less experienced also. If the latter are considered incompetent to try European British subjects, how much more force can be added to the argument that the former are necessarily incompetent to take up the trial? The subject, however, is a very large and important one, and it would be presumptuous on my part to offer any opinion or advance any argument or discussion on the principle of the Bill. This I must leave to far abler and superior hands.

With regard to the second question asked by the Government, I beg leave to state that no practical difficulty or administrative inconvenience whatever has arisen or been felt, or likely to be felt in the future, by not investing the Native magistrates with the powers in question. In the face of such large agitation against the Bill, which touches upon the long-existing privilege of European gentlemen of being tried by their own countrymen only, I see no reason whatever to pass the Bill into law, especially as, under its provisions, a very few persons only would be invested with the powers. This number of magistrates would be so small, taking the whole interior outside the presidency town, that they would not be at all missed in the reckoning of magisterial officers for the trial of offenders. During my long service in the present line, for nearly 23 years, I did not find a single case in any district, wherever I went, in which inconvenience or difficulty was experienced from paucity of competent magistrates to try a European British subject. The matter may therefore be left alone for the present. There is no need whatever, in order to invest five or six officers only throughout the province of Bengal, with the necessary powers, to pass a law against the opposition of as many thousands, or even more.

LETTER, No. 339, from BABOO RAM CHURN BOSE, Sub-Divisional Officer, Ranaghat, to the MAGISTRATE OF NUDDEA, dated Ranaghat, the 19th April 1883.

WITH reference to your memorandum, No. 586J.G., dated 6th instant, I beg to state for your information that, so far as regards the removal of an anomaly in the Code, the amendment proposed is desirable.

Gradually, as Native covenanted officers rise in grades, and obtain charge of districts as magistrates, administrative inconvenience is likely to arise.

I am unable to state as to whether or not the alteration proposed is presently expedient.

Note by the Officiating Magistrate, 24 Pergunnas, on the Criminal Procedure Amendment Bill.

The Government of India "has decided to settle the question of jurisdiction " over European British subjects in such a way as to remove from the Code " at once, and completely, every judicial disqualification which is based " merely on race distinctions."

At this somewhat advanced stage, the public are taken into the confidence of Government, and Government servants are consulted and invited to express their opinions. The subject to be dealt with would be difficult and delicate under any circumstances; it is especially so when the writer feels that he is not assisting in the formation of a judgment, but confirming or contending

against a judgment already formed. Unfortunately, I feel it my duty to take the latter part. I will give my reasons briefly, and I trust that, in nothing which I may say, I shall be deemed to show any want of respect towards those above me, who are already committed to opinions differing from mine.

The Bill, prepared in accordance with the policy disclosed in the Statement of Objects and Reasons (from which I began by making a quotation), would level race distinctions in three ways:—

First, it would confer a jurisdiction (not at this time possessed) over European subjects upon selected Natives who are (a) members of the Covenanted Civil Service; (b) members of the Native Civil Service, constituted under the Statute 33 Vic., cap. 3; (c)* assistant commissioners in non-regulation provinces.

* I take no account of the fact that Natives might, if the Bill were to pass into law, be eligible, as cantonment magistrates, to try British subjects; for it is obvious that only British officers should be made cantonment magistrates; nevertheless, it must be remembered that a cantonment magistrate is subordinate to the magistrate of the district, who could always (whether he be a Native or an European) withdraw a case from his file, and place it on his own.

Secondly, it would confer that jurisdiction, as a matter of course, on all Native sessions judges and district magistrates.

Thirdly, it would deprive Government of the power which it now has of appointing as a justice of the peace any European

British subject who either is not an official or is unofficial, but is not (a) a covenanted civil servant, (b) an assistant commissioner in a non-regulation province, or (c) a cantonment magistrate.

On the first and second of these points, I think the alterations suggested are at least premature; and on the third point I regard the proposed changes as entirely wrong and unjustifiable.

It will, I trust, be needless for me to repudiate any sympathy with the harsh, not to say cruel, expressions of race-feeling which have been uttered in the course of the public discussions. I consider them to be as impolitic as they are ungenerous. No one could serve for 20 years among the people, engaged in attempting to administer justice or to improve their material condition, without feeling the strongest desire for the advancement of their race; but I maintain that these sentiments are perfectly compatible with due caution, and with respect to the interests and opinions of our own countrymen. It is idle to say that only those are true friends of the Natives who will assert their fitness for complete political equality with Englishmen. It is neither right nor wise to endow them with qualities and capabilities which they do not possess, or to be blind to their defects—defects which arise in the main from causes which they cannot control.

It is worthy of note that the framers of the Bill have admitted in the clearest terms their opinion of the unfitness of Native officers generally to try European British subjects; for they do not propose to confer jurisdiction on any uncovenanted Native officers, however able, judicious, experienced, and competent he may be. That there may be no race distinctions, the Government refuses to allow jurisdiction to European officers of a class which has hitherto had it; and private English gentlemen may not be made justices of the peace, because the Government cannot utilize Native gentlemen in that manner! When I say that no Native uncovenanted officer is to have jurisdiction, I refer to the Regulation provinces; for, according to the Bill, a man, unfit as a deputy magistrate to try Europeans in a Regulation district, is fit to try them as an assistant commissioner in a Non-Regulation district, where he is more likely to be thrown on his own resources, and less liable to be controlled by public opinion!

The Government, then, by excluding the great body of uncovenanted officers, has admitted the general unfitness of the Natives for the powers to be conferred by the Bill; and it is, it seems to me, incumbent on the advocates of the measure to show that there are strong reasons for making the distinction in favour of particular classes: for this distinction will be the cause of severe jealousies and heart-burnings among the classes shut out, and the existence of such feelings as these will be an evil of no small magnitude, sufficient to outweigh, it may be, even considerable advantages.

It is now necessary to see why it is inexpedient to confer jurisdiction of the kind contemplated on the Native officers generally. It is inexpedient, partly because they have not the necessary qualifications, and partly because they will not command the confidence of the class to be brought into their power. To do justice, something more than a wish to do justice is necessary; and it is cruelty to send an accused person, especially if he be innocent, to be tried by a court in which he has no faith. For a man to sit equitably in judgment over another, it is requisite that he shall be capable of understanding his motives and the springs of his action; he must be able to test the truth of evidence by his own knowledge of the customs and modes of thought of the class to which the accused belongs. Such knowledge is to be gained, not to any great extent from books, but by the habit of daily life. Now, the Natives of this country differ from us widely in religion, manners, tastes, and sentiments, and especially in domestic life; as yet they have mixed with us so little that they are not able to comprehend and allow for those differences. I wish strongly to urge as a disqualification the ignorance of English domestic life, for it appears to me impossible that a person, not well informed in this respect, could do justice in a difficult case to an Englishman. It would be astonishing indeed if, notwithstanding these disadvantages, a Native magistrate should desire to undertake the trial of European cases! And, as a fact, I know very well that the Native deputy magistrates have at present no such desire.

The retort is obvious that, if this be true of Natives trying Europeans, it is equally true of Europeans trying Natives; and this retort is not without reason. I myself (and I am sure every other European magistrate has had similar experience) have very frequently felt the enormous disadvantage of the want of a thorough knowledge of the manners and customs of the people, and I cannot confidently say that ignorance has never led me into injustice. Every European magistrate must feel this; and I know that in practice an attempt is made to select Native magistrates for the trial of cases involving minute knowledge of Native habits. But our case as regard natives is different from that of Native magistrates as regards Europeans. Say what we will, and disguise it as we may, the English are dominant in India; and though individual Natives may rise to high positions by their talents and virtues, English officers must, for a long time to come, form the backbone of our administration; and, however much we may now and then be at fault, through ignorance or even prejudice, the frequency with which English magistrates are asked to take up cases themselves, or to refer them to their English subordinates, shows that the people on the whole have confidence in them.

That Europeans have not the same confidence in Native officers as a class is due, partly to the defects in the latter, which I have pointed out, and partly to defects in the former themselves. If we, who spend our lives among the people and come into contact with them in so many ways, know but little of their manners and feelings, what can be expected of the unofficial Europeans generally, especially of those of the lower classes, such as are most likely to be affected by this Bill? Race feeling and race prejudices are much stronger among them than with us, and misunderstandings are far more likely to occur in their case than in ours. It is impossible to ignore these feelings and to legislate as if they had no existence.

There is another point which I think is not to be lost sight of, and that is that race feeling is by no means confined to the Europeans. Comparatively little, certainly not unreasonably much, of it exists among the old school of Natives in Bengal; but it is impossible not to see that it is very openly, and sometimes offensively, displayed by the younger men. Whenever a case occurs in which a Native is on one side and an European is on the other, this feeling appears to be aroused. I could without difficulty name many instances, but I will take one of the latest—the Patna case—in which an European officer was fiercely and unanimously assailed by writers of a certain class for doing his duty in the cause of law and order, which were defied by a contumacious Native. The strongest language was used while the case was pending, and no means were left untried of inducing the Government to abandon the officer to the agitators. Had a Native magistrate been in charge of the district, and supported his subordinates, as it was his duty in this

instance to do, no words would have been too strong to express the anger of his countrymen. I know, from my own experience, how painful an agitation of this kind can be to an European officer whose study it has been to be a friend of his people; but an European officer can resist such pressure. Is it likely to be so with a Native? The pressure will be ten times harder for him, for he will be aware that, if his decision be in the favour of the Englishmen, he will be regarded as a traitor to his country, and will be told so in no measured language. I do not mean to say that I consider these agitators to be necessarily dishonest, but I do say that an impulsive spirit of partizanship is one extremely common in Bengal, and that until the leaders of Native thought show themselves less imbued with it, and more sober and just, they are not the people to have jurisdiction over the lives and liberties of their alien conquerors.

Whether these are the reasons which have led the Government to abstain from giving the jurisdiction to the great body of the Native magistrates, I do not know; they seem to me to be cogent enough to justify the policy.

And now I come to the exceptional classes provided for by the Bill. I have already pointed out that there is even less reason for giving the powers to assistant commissioners than to deputy magistrates. There remain the ordinary covenanted civilians and the statutory civilians. I cannot imagine what real distinction in their favour there is between these latter gentlemen and the deputy magistrates, except in name and in the opportunities which even the worst of them will have of rising to higher rank. Unlike the covenanted officers, these men have made no sacrifices, have displayed no energy, have had no opportunity of studying English life and manners, and there is not the slightest guarantee even of their intellectual ability. I have had some means of forming an estimate, for I have had as my assistants two of the covenanted officers and an equal number of the statutory civilians. I do not wish to go out of my way to write harshly of the latter; I will only say that they are not, and never will, or can, be comparable to the former. I look upon the appointment of these statutory civilians as a deliberate sacrifice of efficiency to the policy of ensuring that a certain number of Natives shall hold appointments in the Civil Service. While I gladly welcome to the Service those Natives who have struggled for their appointments, and have gained them by merit, I do not think that the responsibility of governing large tracts of country in accordance with English ideas should ever be made over to men whose only notions of those ideas are to be gathered from a superficial acquaintance with books, and from the very slight social intercourse with Englishmen which is available to them here.

I do not wish to disparage these men needlessly; but I do not hesitate to say that they will not, with rare exceptions, command the respect of their subordinates, whether covenanted or uncovenanted, Native or European. If this be so, what confidence can we expect the unofficial European community to have in them? So far as fitness to have jurisdiction over Europeans is concerned, I regard them as less fit, rather than as more fit, than the deputy magistrates. In no respect better, they are likely to be worse in one important particular. Educated under unfavourable influences, without knowledge or experience of the world, not subjected to that wholesome discipline which an English school-boy receives from his fellows as well as from his masters, the young man of good family finds himself suddenly raised to the rank of an Indian civilian. If arrogance be sometimes laid to the charge of those who have enjoyed the advantage of a better training, what is to be expected of the statutory civilian? It would be scarcely in human nature that he should not be inflated with a sense of his own importance and dignity; and this, I think, will be admitted to be a very unsuitable frame of mind for a Native officer engaged in the peculiarly delicate task of investigating a difficult case against an European, perhaps ignorant and prejudiced, and possessed in a high degree of the pride of race! A grave scandal would be certain in such a case.

It may be said that I am now arguing against the statutory service rather than against the Bill; I am arguing against both, and I have no hesitation in saying that, if it is thought necessary that all Native civilians shall be eligible to try Europeans, the system under which Native civilians are appointed and trained in this country ought to be abolished, or greatly modified.

I now come to the case of the covenanted officers appointed in the ordinary way. They stand on a very different footing from the class just dealt with. They have shown energy and enterprise; they have proved their ability and attainments; they are men who would, if they had never left this country, in all probability have obtained positions of power and influence; they have spent some three or four years in England; they have mixed in English society, and have measured their strength against that of young Englishmen of their own age. It must be their own fault if they have not acquired some insight into the motives and character of Englishmen, and if their experiences have not increased the breadth of their views of life. So far as these men are personally concerned, I should not object to give them some jurisdiction over Europeans, at any rate by the time they became judges or district magistrates; but there are considerations which, in my judgment, ought to make the legislature hesitate in conferring it.

In the first place, I consider that the present state of feeling among that class of educated Natives which controls the press is such that it is not desirable now to extend the jurisdiction of any Native over Europeans. I have already alluded to the wild and passionate spirit of partizanship—a marked characteristic of the ordinary Bengali. It leads to "*dola doli*" in almost every village in Bengal, and is now being applied to politics. The very notion of fair play is unknown; the party man is perhaps not consciously unjust, but it seems not to occur to him that his opponent is entitled to justice. A Native gentleman, who is inclined to be fair and moderate, does not like to expose himself to the torrents of abuse which would be poured on him in the event of his taking the unpopular side. I will give a single example:—It will be remembered that, immediately after the European meeting at the Town Hall to discuss this Bill, a brief memorial was submitted, urging the Viceroy to proceed with it. This memorial was signed by a few representative men, and, among other statements made in it, was one to the effect that it was quite a mistake to suppose that the Natives do not care about the Bill. I had some little conversation on the subject with one of these representative gentlemen, and he assured me that this was not a mistake, and that few Natives really do care about the Bill. I have not the least doubt that this gentleman was imparting his real opinions to me, for the Bill could not but be distasteful to him personally; and I believe that, holding these opinions, he attached his signature to the memorial simply because he could not face the invectives which would be hurled at his head by the indiscriminating patriots of the press. I do not think it would be right to expose our Native covenanted civilians to risks of this sort. In any case of interest between a Native and an European, the Native magistrate or judge would be in a position of great difficulty. If he decided for the Native, unless the case were very clear, his impartiality would be suspected by the Europeans; if he decided for the European, he would be execrated and burned in effigy by his more patriotic countrymen.

Probably some modification of this state of things may be looked for in course of time, and I think I may say that, in one newspaper at least, I have observed a growing disposition to be moderate and fair; but until the educated classes generally can learn self-restraint, I would not give any Native in the mofussil criminal jurisdiction over Europeans.

The next point is, that I doubt whether even the covenanted civilians would generally command the confidence of Europeans. They would probably deserve it to a greater extent than they would have it, but this would not alter the fact. The prejudices of Natives are regarded, and allowance is made for them whenever it is possible to do so; why should nothing be yielded to the prejudices of Europeans? I need go no further into this consideration, but I think it entitled to great weight.

A third difficulty is, that to make a distinction between the covenanted civilian and the statutory civilian, or the uncovenanted deputy magistrate, would probably lead to much heart-burning and jealousy. So long as the present broad distinction, founded on obvious and, as I think, sound reasons, is maintained between officers who are European British subjects and those who are not, there is no ground for this unpleasant feeling. The Native covenanted officer may feel it an anomaly that he has not the powers, in this one respect, which are wielded by his European comrade; but the deputy

magistrate (perhaps a grey-headed officer who, by distinguished service, has raised himself to be a Member of the Legislative Council) has not the mortification of seeing powers denied to him, but given to the young magistrate in the Covenanted Service, or to the statutory civilian, his inferior, perhaps, in every useful quality.

For these reasons, I think it better not to change the law even in favour of the covenanted officers. But I cannot see that there is any reason why those officers should consider themselves aggrieved. It is not a privilege of the judge that he has power to try prisoners; but it is a right of the prisoner to be tried by a court in which he has confidence. In the case of jurymen, this principle is acknowledged in the right of challenge. But besides, as Mr. Carstairs points out in the note which I am submitting with this, the position of a Native district magistrate or judge implies great power and influence over his fellow-countrymen. A district magistrate and his large executive powers are necessary because they enable a large tract of country to be governed by a comparatively small number of officers. No Englishman in England, or in any of the colonies, has equal power over an equal number of Englishmen.

It now remains to consider one of the main arguments which have been brought forward in support of the Bill, namely, that it will have the effect of preventing administrative inconvenience. It must be remembered at the outset that the classes of officers to whom it is proposed to give jurisdiction over European British subjects have it now in all cases in which the European British subjects do not claim their privilege, and the cases in which it is waived are not a few. It is better sometimes to be set at liberty at once than to appeal to Cæsar. In cases of minor importance, obviously it is to the interest of the accused rather to run the risk of a small, or even moderate fine, than to incur the certain expense and annoyance of being tried in some distant place; and if the courts of Native magistrates gain in the estimation of European British subjects, the more frequently will European British subjects be content to be tried by them. The more fit the courts are to exercise this jurisdiction, the less practical inconvenience will result from not formerly bestowing it on them. If the Native courts show themselves just and fair and competent, the privilege of a British subject will be simply a check on them, to be exercised only on extraordinary occasions. Up to this time no case has ever arisen within my experience, in which inconvenience has arisen from the working of the present law. Probably some cases of slight inconvenience have actually occurred: possibly in number one-five-hundredth part of the cases in which inconvenience has arisen from second class magistrates being in charge of sub-divisions.

And now let us take another view of the Bill, as it affects the convenience of the administration.

In the early part of this note I showed that the equality of race, which is

* *Note.*—I am taking into account only the justices of the peace for Bengal, Behar, and Orissa, who are resident in the mofussil. If we also have regard to the list of justices of the peace stationed in Calcutta, or on furlough, or employed under other Governments, we shall find 67 more gentlemen now justices of the peace, who could not be made so if this Bill becomes law. In the case of those, however, who are under other Governments, obviously no present inconvenience would result in Bengal, and officers stationed in Calcutta could be made magistrates for Calcutta only; but those who are on furlough are of course available to Government.

the aim of the Bill, is to be effected, not only by giving jurisdiction to Natives, which they have not now, but also by taking away from Government the power of conferring jurisdiction on Europeans of classes which now possess it. On an examination of the Bengal Civil List for April, I find* 23 European deputy magistrates, and 14 other European gentlemen, neither deputy magistrates nor covenanted civilians, exercising the powers of a justice of the peace in the mofussil. Perfect equality will not be attained till these 37 gentlemen die out or retire, for their powers are reserved by the Bill. But still it is worthy of note that, under the present law, the Government commands the

services of 37 Justices of the Peace of European race, who, under the proposed law, could never have been invested with the necessary powers. Can it be said, then, that the gain in administrative convenience, on which stress is laid by so many advocates of the Bill, is so marked as they appear to believe it?

Upon the whole, I think that the Bill should not pass; the want of it has not been felt by the Government or by the people at large; far from adding

to the resources of Government, it in truth seriously diminishes them ; it is an assertion of an equality and a similarity which have no existence as yet ; it does good to no one, while it has done infinite harm by forcing the two races into an injurious contest.

But it is said that, even granting that the introduction of the Bill was an error, it would be wrong now to abandon it, as this would be a concession to clamour. I can see no force in this argument. It seems to come to this—that, had the measure been less open to objection, less decidedly obnoxious to the community affected, than it is, the legislature might have abstained from passing it ; but since it has roused that community to a high state of excitement and indignation, it must now be maintained with obstinate perseverance. A strong Government is not to be just and wise, because it is afraid of being thought weak ! I do not sympathise with the violent and resentful phrases which have been used in the course of the discussion ; but I do think that they afford no reason for ignoring the powerful feelings which have given rise to their use.

It has been said by the head of the Government that this measure is to be final. No one presumes to question the absolute sincerity of this assertion ; but I cannot avoid the belief that the Europeans as well as the Natives are right in thinking that the legislature can never stop here. If the Bill pass, the next step must be to extend to deputy magistrates the jurisdiction now proposed to be given to statutory civilians, and there are other distinctions in the Procedure Code which will certainly be attacked. The more advanced Native politicians openly accept this as a “small instalment of their rights”—“a step in the right direction.” It is because of the universal disbelief in the finality of the measure that the European community is so deeply moved.

Friends as well as opponents of the Bill point to the small immediate practical effect which it will have if it become law.

The former are astonished at the vehemence with which the harmless proposal to soothe the feelings of a few officers is met ; the latter say : “If this be all your purpose, why should you disturb the whole country to attain an advantage so trifling ?” But they see and know that the principle which the Bill is designed to illustrate is of far wider application, and they believe that the Government, in accepting it as their supreme guide, are entering on a policy which is dangerous because it is premature.

I have not thought it necessary to call for expressions of opinion. I have, however, had some conversation with not a few gentlemen, both European and Native, my subordinates and others. The Europeans, official and unofficial, are unanimously opposed to the Bill ; I have not heard a single voice in its favour. Some of the natives would wish to see it passed, but several gentlemen of experience and authority have informed me that they have no such desire. Naturally they are not disposed to attach much weight to the argument that Native officers are unfit to try Europeans ; but they think that the measure has been introduced somewhat too soon, and that the good which it is likely to accomplish is small in comparison with the great mischief occasioned by the fierce and angry discussions to which it has given rise.

Though I have not called for opinions, Mr. Carstairs, the late joint-magistrate, in anticipation of such a call, recorded a note, which he left with me on his departure on furlough, and at his request I now submit it. There are points in it deserving consideration.

(Signed) C. C. STEVENS,

The 30th April, 1883.

Offg. Magistrate, 24-Pergunnahs.

NOTE by the OFFICIATING JOINT MAGISTRATE, 24-Pergunnahs, on the proposed Amendment on the Criminal Procedure Act.

BEING about to proceed on furlough, and understanding that the opinions of officials are to be called for on this subject, I leave the following notes :—

2. Before entering into the merits of the Bill, I will shortly discuss the question—“To what is it likely to lead ?”

3. When this Government goes away, as it will within a year or two, its successors will not be bound by its pledges. A question re-opened once may be re-opened again. The scope of the Bill is, for administrative convenience, to give certain courts, not now possessing it, power to try European British

subjects. The only qualification for this power is to be personal fitness, the additional qualification now existing, that the person trying should himself be a European British subject, being removed. To confer the power is to declare personal fitness; to withhold it will therefore be a sentence of unfitness, or a slur.

4. It is a slur upon Mr. Behari Lall Gupta that he has not this power (out of Calcutta), while I have it. When he gets it, the slur will be passed on to Nawab Abdul Latif. If he gets it, some one almost as good will feel the slur. Wherever the line reaches, there will be a pressure to pass it on the part of those next below it, and no good reason for stopping short of any particular person. Men begin to covet honours within their reach; much more wish to escape a slur if it is possible. Administrative convenience will demand extension of the power. Personal feelings of the disqualified will also demand it. I see no stopping place short of all courts.

5. To proceed to the merits, the first question is "Should Europeans be put in the power of any but Europeans?"

Our position in this country; the claims of each of us, even the meanest, as a member of a free nation; and the importance of keeping up our prestige, surely in themselves ought to settle the question. But apart from that, there are the following considerations:—Inside the few square miles that constitute our presidency towns, the young European, on arrival, finds advisers, society, public opinion, courts, counsel, witnesses, and friends at his door. The Natives he sees have abundant evidence of our power in soldiers, cannon, ships, wealth, intellect, daily before their eyes. Public opinion is master.

6. But take the mofussil. The young Europeans who come out as mechanics, drivers and guards, assistants in tea-gardens and indigo factories, traders and agents, year by year, are scattered over the country, not knowing the country, and not understanding; intolerant of Native customs and thoughts, for there is much to get accustomed to; home-sick, inexperienced, unused to the climate, consequential as fresh arrivals generally are. Is it fair to leave such a man in lonely places, without money, friends, or advisers, to be brought up in custody of a Native policeman before a Native magistrate, in presence of a Native crowd, to be deposed against by Native witnesses? A man can stand up against anything so positive as hatred or treachery, and a sensation can be got up about these, but there are the half-smiles, possibly real pity, imperceptible sneers, shoulder-shrugging. He half understanding, and not half understood, seeing insults even when none are meant, as can well be seen, very easily be exasperated beyond bearing. His opponents would draw him on to insult the court. He would be only too ready to fall into the trap. It would be a very refined, subtle and intense form of the noble game of bull-baiting. The presence of a European presiding in the court has no doubt prevented much of this—both the baiting and the irritation under it. How long would it take to get over the consequences of one desperate act, attributed rightly or wrongly, to the absence of a European on the Bench? Europeans will no more become accustomed to being tried by Natives than eels to getting skinned, for it will always be a new experience to one who has not gone through the process. Even a certificate of fitness given by Government will not extort awe towards the court from the European, and no one will deny the very serious risk of ugly scenes. No one can calculate the effect of even one such scene.

7. The next question is—"Are our courts fit?"

In England, as in all countries, there was at first a struggle for power. It ended in that great combination of all the powers, the British public, which made our laws. They are, in fact, the public will expressed, and are enforced by the British public itself, not only through its officers, but directly by its own influence.

In India there was also the struggle for power, but here the local will was suppressed by the imposition of a greater power, viz., the British Government. The use to which power is put in all barbarous countries is to spoil. In this country, open loot was suppressed, and the appetite for plunder had to be satisfied by intrigue. Intrigue guides forces, and so intrigue was brought to bear on that greatest of all forces in this country—the British Government. The Government has made over most of its power to be wielded by the law courts. So, on the law courts a strong current of intrigue has been turned.

Its weapons are perjury and forgery; and with these every one among the Natives arms himself as naturally as men of old in our country did with sword and buckler. Men too good to lie themselves will often freely employ others to lie for them. Perjury is so common that it can seldom be punished. That is, there is no material with which to prove it perjury. It appears then, to say the least of it, that our courts, unaided by public opinion, which is the strongest bulwark of justice in England, and being made in a barbarous country the arena of struggles which naturally would be fought out on the field, are in a very different position from the courts in England.

8. It is not necessary to preach the harsh doctrine that Natives of this country are so very wicked, and will never be any better. They are still in the barbarous stage when plunder is considered more honourable than worth, and it is to be hoped they will get past it. Intrigue, and not violence, marks that stage. Of the artificial nature of our advanced laws and procedure in this country, no stronger proof can be found than the jealousy with which Government reserves all real power for its own paid servants, desiring at least to preserve some guarantee for the purity of those who administer justice. It is as much, as to say that no native can be trusted to administer justice even to Natives, unless it is made worth his while, and unless he is removed from all the temptations which beset a man not severed from all local interests. Europeans might well say that they distrust the classes from whom Native officers are drawn, and do not believe in the purging effects of office. Dangers from perjury, forgery, and intrigue are serious enough already. Natives did not make our laws; our courts are not a device of Natives. Our rules of evidence do not commend themselves to Natives. Natives generally, of however great wealth and high position, are not allowed to administer our laws to Natives. Our courts are not scattered over the country, within easy reach of every one, but are rather like garrisons of justice in a hostile country, and they have been set up, maintained, and strengthened by Europeans. This it is that has gained them the confidence of European British subjects.

9. The court presided over by a Native, foreign to the laws and those who made them, will not be the same thing to the Europeans; and the sensitiveness of the presiding officer will not get rid of their distrust. They will, right or wrong, feel it necessary to resort to corruption, (not necessarily of the officer himself), to perjury and forgery. Some will leave the country, some will be ruined, and some will be like the energetic Native, of whom I heard it said, "He is crooked, because they will not allow him to be straight." It is in the interest of no one more than of the Natives themselves and the Government that Europeans should be kept out of the intrigues around them; for when a European turns blackguard, he is a big blackguard. It would be a bad thing to drive out men of high character, and to substitute for them adventurers with none. When, on behalf of myself, my family, and friends, I protest against the proposed change as being likely to promote this undesirable end, I do not think that I shall lose the confidence of my Native friends. They at least understand.

10. I come now to a very delicate question, that of the fitness of Natives for the powers. It has been pretty well shown that Europeans have not the same confidence in Natives as they have in their own countrymen; and before this is put down to petulance, it would be well to see whether there are no solid reasons for the distrust. In my opinion, solid reasons exist. In the following remarks, I intend to speak of Bengalis only whom I know. I will also speak of them as a whole, and not as individuals. If the bulk can be judged by the sample, much more surely can the sample be judged by the bulk.

12. The first objection is the difference of religion. Our law undoubtedly owes to the Christian religion the following fundamental principles:—

- (1.) Brotherhood of man.
- (2.) Absolute standard of right and wrong.
- (3.) Humility, and openness to reason.
- (4.) Protection for the weak.

The law was made by our ancestors. Rightly or wrongly, Europeans in this country believe that there is more chance of the spirit of our law existing in the descendants, brothers and sons of those who made and maintain it, than in the descendants, brothers and sons of those who have never been able

to imagine such laws, and do not even to the present time show that their minds have been taken hold of by these laws. Legality without righteousness is the body without the soul, and that is what Europeans fear they will get.

13. The next objection is the constitutional timidity of the race which is to furnish these new rulers. The Bengalis, as a race, cannot stand up without being protected, even against one another. We Europeans are their chief guardians, and they supplement us by means of up-country durwans. They are strong upon the stronger side; but we have no faith in their steadfastness in a time of utter need. We cannot trust them to help us when, in a time of utter need, we have no one else to depend on. Now, that time may come to any European, man or woman, at any time. Not so much treachery as just weakness is to be feared. I do not say all Europeans are strong and all Bengalis weak; but here are we, their masters, and we are so because we are stronger. Do Bengalis try to make a reputation for courage by daring deeds? It is a jest against them that they shun "dangerous departments." *Sola* is not *teak*. It is no slur on *sola* to say it has not all the qualities of *teak*.

14. The third objection is that they are not trusted by one-another. Some of them have blamed severely a few reckless epithets applied to them in the heat of oratory. With those epithets I have no sympathy, but the worst of them is not nearly so bad as Natives of respectable position are frequently found to use against other respectable Natives. All that they say may not be true, but where there is smoke there is fire. It is not to be wondered at if Europeans take Natives at their own estimate. If their statements are all false, what is to be thought of the respectable Natives that make them?

15. The fourth objection is that the European magistrate can perform extra-judicial functions, which a Native cannot. He keeps up a healthy tone in European opinion, which, and not the terror of the law, is the chief check at present on European crime. He can also bring direct influence to bear on his young, lonely, and inexperienced countrymen, by giving them timely cautions, and making them feel they are watched by a friendly eye. It would be a poor exchange to substitute fear for free obedience in dealing with Europeans, and I am not at all sure that it would be found to work. I have had practical experience of the two methods.

16. It is obviously advisable to go as little as possible into this delicate question of race qualification. I think I have said enough.

17. I have carefully avoided, in all I have said, any allusion to the subject of official qualifications for posts under Government. That question is not directly involved. But in case it be attempted, as it has been, to stop my mouth and cut away the ground from under me, by saying that if Natives are fit to be district magistrates they are fit to try Europeans—if I am forced to admit them fit for both or unfit for both,—then I deny that they are fit for either. Giving a Native power to try Europeans is not to make him fit, and, if he is not fit, would be to increase, and not diminish, the number of anomalies.

18. The position that no Native is fit to be a district magistrate can be maintained without casting any slur on individuals. The very essence of the system under which the district magistrate exists is that it is worked by foreigners. No Englishman in England would be allowed over his countrymen such power as the district magistrate possesses over Natives in this country. It is not an invidious thing to say that no Native should thus be put on the neck of millions of his countrymen. It would be invidious to his countrymen to say that he should. Considering the race from which they spring, to put Natives in this position would be what the poet calls "delivering the tasks of might to weakness."

19. What, then, it may be asked, becomes of the Queen's Proclamation? How are Natives to be advanced? I would very humbly submit that the true way of complying with the spirit of this Proclamation is not to pick out a Native here and there, thrust him into a position which is only possible so long as he is cut off from all local ties and interests, and turn in the wrong direction—an impossible direction for all but a very few—the ambition and strivings of his neighbours. The true way of answering the Proclamation is by developing schemes of local self-government, by which all the people may be drawn onwards together, and organized under their own leaders for their

own work. Surely, if in free England public ambition is satisfied with a seat in a town council, a seat on a school board or district road board, or, at the very most (leaving out legislative honours), on a county board, it is putting mad dreams into the heads of Natives to suffer them to look on as their rights such posts as would be equivalent to that of governor of half of Scotland, or over a third of Ireland. But in speaking of local self-government schemes, I must be permitted to say that there is equal danger in these, of a few being detached, from impatience of slow progress, and advanced prematurely.

20. In my anxiety to avoid all personal criticism, I have passed over one point which has been raised, viz., that Natives who have been to England, at least, must understand the English thoroughly. As to that, I would only submit the following considerations :—

- (a.) The Native goes to England after his boyhood is over.
- (b.) Stays for two or three years only.
- (c.) Leaves it while still a youth.
- (d.) Spends his time there in hard study.
- (e.) Probably meets with reserve in society, as an Englishman does here.
- (f.) Europeans come out here in early manhood and settle for life.
- (g.) Their work and their duty is to learn the people and their ways.
- (h.) Yet Native writers and orators say they do not understand the Natives.

I am not inclined to admit in our Native fellow-subjects greater insight into character, anxiety to learn, or candour, than are in ourselves. If Natives are to be suffered with applause to deny our knowledge of Natives, then we are quite justified in saying that they know nothing about Europeans, or at most have that "little knowledge" which is a "dangerous thing."

21. A word about the practical difficulties, and I have done. Europeans have every interest in waiving their rights whenever there is no strong reason for claiming them. As a matter of fact, they often do waive their right. If there is any doubt about the legality of this, it should be removed.

In many other cases it would be little more inconvenience to send the parties to the nearest European officer, than, as must now be done in every case, European or Native, to some centre which may be distant from their homes. Where the British Government has ventured to leave so enormous a tract, as is implied in such inconvenience being very great, without a British officer, then in case of need, such an officer might be specially deputed to try the case. The cost and inconvenience would not be nearly so great as the Abyssinian Expedition, which is understood to have been undertaken in much the same interests. The individual European does not care for general principles, but looks at how they touch himself, and we have a prejudice that no one can look after a Briton so well as a Briton—certainly not a Bengali, who, we cannot but feel, is resting on our shoulders. There are plenty of Bengalis for them to look after.

Alipore, 31st March 1803,

(Signed) R. CARSTAIRS,
Offg. Joint-Magistrate.

LETTER from the SECRETARY to GOVERNMENT, BENGAL, to SECRETARY to GOVERNMENT of INDIA, Legislative Department.—(No. 674 J.D., dated 21st May 1883).

IN continuation of my letter No. 651J.D., dated the 18th instant, I

am directed to submit, for the information of the Government of India, copies of a letter* from the Commissioner of the Chittagong Division, reporting on the Bill to amend the Code of Criminal Procedure, 1882.

* No. 11A, dated the 10th May 1883, and enclosure.

I have, &c.
(Signed) F. B. PEACOCK.

Enclosures referred to in preceding Letter.

LETTER No. 11A., from the COMMISSIONER of the CHITTAGONG DIVISION, to the
 . SECRETARY to the GOVERNMENT of BENGAL, Judicial Department, dated
 Camp Rangamati, the 10th May 1883.

WITH reference to your letter No. 1518J., dated 27th March last, I have the honour to submit the following report on the Bill to amend the Code of Criminal Procedure. I have obtained the written opinions of some officials; those of others addressed have not reached me. I have also been at some pains to ascertain the sentiments of the non-official Natives in Chittagong; and I may add that, with but slight exception, I cannot discover the existence of any sympathy with the principles of the Bill, or any favourable feelings regarding it. The feeling of the Mahomedans is certainly adverse to the Bill, and the sentiments of those with whom I have conversed on the subject coincide very much with those expressed by Moulvie Delawar Hossein, B.A., deputy magistrate in charge of the Brahmanbaria sub-division, a copy of whose letter I enclose.

2. The principle of the amendment is that it is expedient to do away with the old privilege enjoyed by Europeans of being tried by men of their own nation, and in place of that to substitute trial by Natives. This is not indeed avowed as either an object or reason for the introduction of this measure; but this is in fact what it tends to, for it would be in the highest degree anomalous to entrust the duty of trying Europeans to a certain class of Natives, to the exclusion of others; for I hold that the residence for a year or two in England cannot, and does not, undo the teaching of early years, or alter in any way the character which has been formed during the first 18 or 20 years of a man's existence. As a Mahomedan of the old school once remarked to me, knowledge of English does not make any one a *hakim*; and I feel, and the feeling is shared, I know, by others, that there is many a deputy magistrate of the old school, unacquainted with English, by whom I would rather be tried, if need were, than by one brought up in sympathy with the class, who support by their writings, and find an exponent of their views in the columns of the vernacular press of Bengal, with whom it is a point of honour to traduce and vilify any European, simply because he is a European.

3. Trial by their own countrymen has always by Europeans been considered in this country not only a privilege, but as a positive safeguard against false charges; and as an accused has within certain limits a right to elect by whom he is to be tried, this privilege, which has been enjoyed in some shape by every Englishman from the time of King John, is not one to be lightly set aside, and is a matter in which the persons most concerned have a right to be heard.

4. I am far from saying that trial by their own countrymen is a privilege which must be secured to Europeans at all risks; but I do hold that the right is one not to be set aside except for good and substantial reasons; it is not to be interfered with on mere theoretical grounds; and practically I fail to see any reason for the proposed change. The people at large do not in any way consider it a grievance that *hakims* should be tried by *hakims*; in their view this is only right and proper. Even amongst the more advanced of the educated Natives such a proposal was never broached until this unhappy discussion raised it into a party-cry; and certainly among Europeans, though the right was not often very rigidly insisted on, there was certainly no cry for a change.

5. Even on grounds of administrative inconvenience change could not be urged as necessary, looking to the small number of covenanted civilians who can, in the course of the next ten or twelve years, become magistrates or judges.

It is very rarely that a case occurs which necessitates the trial of a European by the district judge. Almost all cases are triable by magistrates, or the High Court. In such cases no difficulty could arise, for in all districts where Europeans are to be found, there is, besides the magistrates of the district, a joint magistrate or first class covenanted assistant, and both could not be Natives; while, as to cases triable by the sessions judge, they are

extremely rare, and the contingency of such a case arising in a district where there is only a Native judge is so remote that it is hardly worth considering.

6. The above are some of the reasons why the Bill need not have been introduced; but there are also positive objections to it, first and foremost of which is the strong feeling against it which has been manifested by the Europeans themselves. Those who are most interested in the matter, who from actual experience, and not on mere theoretical grounds, are convinced of the necessity for the retention of the privilege, must surely be entitled to some voice in the matter; and the universal and remarkable unanimity of European opinion on this subject cannot be lightly set aside as mere moonshine. Another objection is that a Native is often not so competent to try a case as an European, simply because he has not made himself acquainted with the ways of thought or manner of life of the accused, and therefore cannot be a fair judge of his motives or springs of action.

7. In this connection I quote what the magistrate of Chittagong says in his report—

“The change proposed in the Bill would in practice chiefly affect cases in which sailors and soldiers are concerned. These, and the railway servants and the other members of the lower classes of British race who are occasionally found in this country, furnish nearly the whole of the cases which arise or are likely to arise. European residents generally are very rarely under trial. In Chittagong there are a good many cases amongst the sailors. If the time should come when there will be no European magistrate in the district to try these cases, then an administrative difficulty would arise; but I do not think the Native covenanted officers would in any way be fitted to try such cases properly. This is not in the least for want of competence, but because it is difficult even for an educated Englishman, very often, to make himself understood or to understand these rough and humorous persons. I have had an English-speaking Bengali pleader conducting such a case, and I am very certain that he did not understand, from beginning to end, what it was about, what the witnesses meant, nor what connexion the defence had with the question asked. It is no slur on a Native officer that an English University education has still not opened to him all the depths of English thought. The cases against Europeans which arise in practice always require a little experience of a practical kind—high education and mental qualifications are of no use in comparison. A deputy magistrate, European or Native, who had served for a year or two as a sailor or as a soldier himself, would always be infinitely more capable of doing justice on British subjects in practice than the highest and best European covenanted civilian who had no such experience.

“An administrative difficulty arose once. Mr. H. W. Barber, an Eurasian officer of long experience as a magistrate, and nominally qualified as a justice of the peace, had to decide a case. He lengthened the proceedings by simple inability to understand them, until the crew of the ship were in a state of little else than mutiny. The master, who could get nothing done, committed suicide, and the owners had very considerable difficulty in getting the ship away.

“Sir Ashley Eden passed an order in this case that the district magistrate must always try these cases in future, in absence of a competent joint magistrate. It would be no sign of incompetence for a Bengali officer to get into the same difficulties as Mr. Barber got into. This I mention as an illustration. My argument is that the trial of European British subjects is quite special work, and difficulties must arise in performing it if the magistrate has not personal knowledge of special kind.”

8. To my mind another objection to passing the Bill is the cry that has been raised in the Native press in favour of it. The privilege of trying Europeans, so eagerly sought and emphatically demanded, does not carry with it any emolument or gain in any shape, and no good reason why this privilege should be prized has been given. The clamour raised, therefore, seems to me significant; it may be the result of mere vanity, but to foster that feeling seems at the present day hardly necessary.

9. I have given thus briefly the most prominent objection to a Bill in favour of which there seems to be nothing practical or tangible; but I

cannot conclude without expressing my regret that an occasion for the discussion of this subject should ever have arisen at all, for it has roused a very bitter race spirit, and re-opened a sore which, ever since the Mutiny, has been gradually healing over. This spirit is plainly enough visible in the newspapers, Native and European, and is not confined to public writing, for I have lately in private heard more ill-feeling expressed by Europeans against Natives, than I remember to have heard since 1857-58. That an opportunity should have been afforded to raise this discussion was unfortunate; but still more so, that the wordy strife should rage for the next four or five months, embittering feelings in some cases already bitter enough; every succeeding week only widening the breach and rendering future amicable relations between the two races less possible.

10. That the European section have been sincere in their objection from the first is evident, while the contrary view has been adopted by the vernacular press, I would hope rather through a spirit of opposition, than from any real desire to gain for Natives the privilege and pleasure of trying Europeans. Be that as it may, the question has now become a party one, and whether the Bill be passed or not, dissatisfaction must be created.

I have, &c.

(Signed) E. E. Lewis.

LETTER No. 104, from MOULVI DELAWAR HOSIAN AHMED, Deputy Magistrate of Brahmanberia, to the MAGISTRATE of TIPPERAH, dated Brahmanberia, the April 1883.

WITH reference to your memorandum No. 806, dated the 19th instant, I have the honour to report.

1. I have been asked to give my opinion on two points—as regards the principle of the Bill, and as regards any administrative inconvenience which might occur if it were not passed.

2. I suppose Europeans will continue to form the majority of the Covenanted and to form a part of the Uncovenanted Service, and therefore, in reference to the second point, I do not think any administrative inconvenience will occur, such as to make it necessary that the Jurisdiction Bill should be passed at the present time.

3. In reference to the principle of the Bill, the Statement of Objects and Reasons says that the Bill has been brought forward to remove an anomaly. In the first place, it seeks to remove the anomaly by depriving those Europeans who belong to the Uncovenanted Service of a power which they have had, thus creating an invidious distinction, and putting a stigma which they do not deserve. A direct lowering of the ruling race is certain to be followed by a lower estimation of their strength by the ruled races, and therefore the Bill would in the future be injurious both to the ruled and the ruling races in India.

4. The second question is whether the removal of the anomaly complained of will not give rise to a greater anomaly. The distinction between an Indian and an European is a broad and well-marked one; it is a distinction based on colour, dress, language, religion, political position, domestic customs, and social manners. But in removing the distinction between European and Native civilians an invidious distinction will be created between two Indians. I do not think so much of a three years' residence in England as to believe it enables a man to become morally or even intellectually superior to him whose education and training are otherwise the same. I think the attempt to remove one anomaly will create another which, being less defensible, would be more pointed.

5. I do not wish to give any opinion in regard to the confidence possessed by the Native professional classes; but I know that the Mohammadans of Calcutta (if no other classes) prefer to engage the services of European attorneys and solicitors to conduct their law business.

6. The next question is whether the time has arrived. Though the tendency of civilization is to remove anomalies, every thing must have its proper time. I do not think the time has arrived to remove the anomaly complained of. It is no sense of right or morality, but the strength of the British Govern-

ment, which keeps the various nations of India from flying at each other's throats. Now, what is it that gives this strength? It is certainly not the few soldiers, whose united numbers are no more than a drop in the ocean. It is the national prestige of the English race which is the strength of the Government of India, and which prevents internecine bloodshed among the various races.

7. This prestige must be maintained not only to preserve order and security, but also to enable the various peoples of India to approach each other in character and habits, and thus to become fused into a united whole. I have no doubt that the prestige of the English Government will be weakened if Europeans should be tried by Native magistrates and judges.

8. It has become the fashion in these days to parade the cry of India for the Indians; but at present there are no people called Indians, and it would be the highest achievement of the English genius for Government, if the vague and shadowy idea now called up by the word Indian should hereafter become tangible and definite: if the Bengalis, the Hindustanese and the Panjabese, the Mahrattas, the Telegus, and the Tamils, should become consolidated into one or two distinct nationalities. To enable it to accomplish this grand task, the Government must continue to own the prestige due to the remembrance of Clive and Hastings, the fearlessness with which Englishmen faced the Mutiny of 1857, and the judgment which keeps semi-barbarous chiefs in check. If the Bill should be passed, this prestige will be assuredly weakened long before the proper time, and the grand idea of radical statesmen—the idea of educating a race of Indians—must be indefinitely postponed.

9. My countrymen will think me a traitor to my country's cause, but true patriotism looks to the future remote rather than to the immediate present. The true patriot should not be carried away by a false claim of equality—a claim which has no foundation in fact. Power and liberty are two very different things. Instead of claiming to try an European on a criminal charge, my countrymen should claim the right of *habeas corpus* to be extended to them. Instead of claiming the possession of a questionable power, they ought to claim the redress of a great and real hardship.

10. I do not think that the right asked for should be conceded at present in express terms. Time, which smooths down so many inequalities, will do in this, as in other cases, what is wanted. Europeans have hitherto been in the habit of waiving their right of being tried by their own countrymen, and if the Bill had not been brought forward, the practice would have gone on gradually increasing. For some time to come the excitement that has been raised, and the passions that have been roused, will lead Englishmen to claim the right of trial by their own countrymen. But I am certain that, when their feelings have soothed down into a calmer mood, the practice of waiving their claim will be revived, and growing more and more prevalent, a silent change will gradually be effected, without kindling any angry feelings.

The Bill is herewith returned.

LETTER from the SECRETARY to GOVERNMENT, BENGAL, to SECRETARY to GOVERNMENT of INDIA, Legislative Department. — (No. 851J.D., dated 30th May 1883).

IN continuation of my letter No. 674J.D., dated the 21st instant, I am directed to submit, for the information of the Government of India, copies of a letter* from the Commissioner of the Orissa Division, reporting on the Bill to amend the Code of Criminal Procedure, 1882.

* No. 264, dated the 22nd May 1883, and enclosures.

I have, &c.
(Signed) F. B. PEACOCK.

Enclosures referred to in preceding Letter.

LETTER, No. 264, from the COMMISSIONER of the ORISSA DIVISION to The SECRETARY to the GOVERNMENT of BENGAL, Judicial Department, dated Cuttack, the 22nd May 1883.

WITH reference to your No. 1518J, of the 27th March last, Mr. Grant, magistrate of Balasore, Mr. Jones, magistrate of Cuttack, and Mr. Godfrey, who was temporarily magistrate of Pooree, have given opinions adverse to the Bill. Mr. Gupta, who succeeded Mr. Godfrey as magistrate of Pooree, writes in its favour. Mr. Grant has submitted opinions from Mr. Apjohn, executive engineer; Mr. Coldren, an American missionary; and Koomar Baikuntha Nath Dé, a Native gentleman of Balasore.

2. Mr. Apjohn is strongly opposed to the Bill. Koomar Baikuntha Nath Dé is strongly in favour of it. Mr. Coldren mentions that he found a large proportion of the leading members of the Christian community not in favour of having Native gentlemen try Europeans. He gives his own opinion to the effect that if Native magistrates have passed all the requirements of Government to entitle them to administer the functions of their office, there is no reason why they should not be granted the privilege of trying Europeans, especially as there is an appeal to a higher court in the case of any seeming injustice.

3. In this country, where false complaints are a common method of wreaking malice, and Europeans from their position, are not unfrequently the objects of such malice, European British subjects have always attached much value to the privilege of trial by their countrymen, and have, I believe, rightly regarded the privilege as one that secured them safety from no fancied dangers.

4. I arrived in this country in December 1856, and was then thrown somewhat largely into the society of a non-official portion of the European community. The proposal to subject Europeans to the ordinary criminal courts on a much larger scale than is now contemplated had well nigh filled the minds of the community with dismay. The Mutiny followed. Jurisdiction not conferred by the Government was exercised over European British subjects at Bareilly and elsewhere. While these events were in progress, I was posted, as assistant magistrate, to a district that was then, as now, conspicuous as an indigo-planting district, and I have still a vivid recollection of the feeling of thankfulness with which, amid the horrors and dangers of that terrible time, it was felt that the obnoxious proposal was at an end.

5. When the Mutiny was over, and the ordinary business of the country could be again attended to, the first Criminal Procedure Bill was passed. Whether it was that the incidents of the terrible period that had just been passed satisfied Government that the proposals were fraught with real danger to its European subjects, or whether it felt that it would be an ungrateful return to the men who, in the crisis, had rallied round it albeit they did so in self preservation, it is impossible to say; but the obnoxious clauses formed no part of the law.

6. Nearly a quarter of a century has passed since the Mutiny, and under a strong and peaceful administration, the country has advanced and prospered. The Government, I presume, hoped that the old feelings had died away, and that the small measure now proposed would be accepted without opposition. It is impossible not to sympathize with the motives that have led to the introduction of the Bill, but at the same time it is impossible not to regret that it has been introduced. I have felt the same regret with regard to other measures of the present administration. The discussion regarding the Arms Act, the Vernacular Press Act, and the State Prisoners' clauses in the original draft of the existing Code of the Criminal Procedure, are all cases in point; they are all matters it was undesirable to agitate. From the extracts copied in the Calcutta papers, it is evident that the action with regard to the vernacular press is already producing very undesirable results, and a future Government may, at a season of difficulty and trial, have to undo what has been done. The government of India by England is an alien government.

However anxiously we may direct our efforts to the welfare of our subjects, this fact should never be forgotten. However sincerely and however successfully we may work for their advancement, there are so many interests opposed to us, that we may be very certain we should not be long here if we let our swords get rusty or our powder damp.

7. I have said that I regret much that this Bill was introduced. It has exasperated, to an extent unknown since the Mutiny, the race feeling between the European and the Native that was largely dying away. The measure is required by no administrative necessity. The only reason for it is one of sentiment. It hurts the feelings of the Native members of the Civil Service that they cannot try European British subjects. I should sympathize with anything that may be felt by these gentlemen as in any measure a disparagement; but I will explain presently why I do not think that on this point they need be sensitive. Even, however, if they had reason to be sensitive, I should still consider that the reasons against the measure are sufficiently strong to render it inexpedient to proceed with it.

8. The objections which the European community take to the Bill may be briefly summarised—

1st.—That Native magistrates, by reason of ignorance of European social habits, customs, and usages, are not well fitted to judge of the probability of European motives and actions; and that, if they are to be tried by them, there is danger that they will be unjustly dealt with even if the magistrate is anxious to judge and act rightly.

2nd.—That a Native magistrate, by reason of race prejudices, may be even unconsciously biased in dealing with a European's case; and that, by reason of his mixing with Native society—hostile, it may be, to their European neighbours,—and hearing hostile accounts, they are also likely to be unduly influenced; and

3rd.—That if the Government passes the present Bill, it will not be possible for it to avoid further and more extensive legislation.

9. To the first of these arguments it appears to me that there is no answer. In the third it appears to me that there is much force. Even in the second I am not prepared to say that there is not some weight. It is but a few years ago that a mixed Commission of high European officers and Native gentlemen of very high rank sat to try the Chief of a Native State on the charge of attempting to poison his European Resident. The European officers were all in favour of a conviction, and the Natives were all in favour of acquittal. It is but a few days ago that a bench of the High Court of European judges, and one Native judge, sat to try a Native gentleman, formerly a member of the Civil Service, who had maliciously compared one of the European judges of the Court to Scroggs and Jeffreys. The Native judge dissented from the sentence passed by his European colleagues. It may be that the difference of race had nothing to do with the difference in these judgments; but the European community, when considering whether it will consent to be judged in criminal matters by Native judges, may not unreasonably think that such cases show that, in matters affecting them, European and Native judges do at times take different views. I have been brought into intimate personal relations with only two of the members of the Native Civil Service—Baboo Romesh Chunder Dutt and Baboo Krishno Gobind Gupta, and I can confidently affirm of either of these gentlemen that, should it ever fall to them to have to try a European, they would bring to the task the same anxious desire to do their duty strictly and rightly, which marks all their other work. I think, however, the European community may fairly reply to an argument of this sort, that Surendronath Banerji was once a member of the Civil Service, and might in the ordinary course have come to exercise jurisdiction.

10. As to the plea of administrative inconvenience arising from the want of the Bill, I can only say that there is not now any such inconvenience, and that I cannot see that there will be any within any reasonably near period. When it arises, if it ever does arise, it can be dealt with. So far from the Bill removing any inconvenience, it will, it appears to me, create inconvenience. The Bill deliberately withdraws from the Government the power

given by section 22, Act X. of 1882, and section 3, Act II of 1869, of appointing European British subjects to be justices of the peace. In this way four* European deputy magistrates, who can now try European British subjects, would cease to be able to try them, and in lieu of these four, one† Native would be empowered. It would also disable Government from appointing Europeans, other than those in section I of the draft Bill, to be justices of the peace. I think that at places like Chandbally and False Point, it may at times be advisable to give such powers to non-official Europeans. In this way also, the Bill, if passed, would produce inconvenience. It would, of course, be possible to alter the Bill in this respect, without altering the distinguishing feature of the Bill, namely, the giving power to Native magistrates to try European British subjects.

*W. R. Ricketts, Bhudruck.
J. S. Davidson, Cuttack.
W. C. Taylor, Khorda.
J. C. Williamson, Pooree.

†K. G. Gupta, Pooree.

11. There is one local point to which I should advert. In his speech on the Bill, the Commander-in-Chief, speaking of the bearing of the Bill with reference to military people, said it was not intended to appoint Natives to be cantonment magistrates. In the cantonment of Cuttack the joint-magistrate, and in his absence the magistrate of the district, exercises the judicial powers of the cantonment magistrate. If, therefore, either of these officers should be a Native, he would, as cantonment magistrate, under the Bill, exercise the jurisdiction which his Excellency appeared unwilling to concede.

12. I enclose copies of the letters of Messrs. Grant and Apjohn, Mr. Gupta's letter, which also gives Mr. Godfrey's opinion, and Koomar Baikuntha Nath Dé's letter.

13. Mr. Gupta says it seems to him that the principle involved is not that of subjecting Europeans to the jurisdiction of the Natives, but that of removing such disqualifications of the judiciary as are based on the accident of birth and race. It is, I presume, with a view to obviate complaint of the continuance of disqualifications of this nature that European subordinate magistrates are no longer to be justices of the peace, because it would be unsymmetrical were they to have the powers and Native magistrates were not. I have already said that on the ground of administrative convenience it appears to me that it is not advisable to take the powers away from European deputy magistrates. Mr. Gupta further says that if the Government were professedly despotic, no one could have questioned its consistency if it thought fit to perpetuate distinctions of race, creed, and color; but having practically declared more than once that fitness should be the only test, it is perhaps too late to question the principle of the Bill. I have, in paragraph 9 above, said that the objection taken on the score of fitness is, in my opinion, not to be rebutted; but apart from this, the promise that fitness should be the only test was never unreservedly made. It was only said that the test was to be applied as far as may be, and this is a very important qualification. We have not as yet had a Native Commander-in-Chief, nor are our regiments of European troops officered by Natives. There are difficulties in the way that cannot yet be overcome.

14. That Mr. Gupta is right in thinking that the European opposition to the Bill is partly dictated by race feeling, there is of course no room to doubt. It is equally certain that race feeling has a good deal to do with the Natives' urgency for the Bill, now that it has been put before them. It is desired not because of the effect it will have on the one or two officers it will affect, but because it will be in some sort a humiliation of the European community. This is an aspect of the case that is not altogether pleasant either to contemplate or discuss.

15. The Bill having been introduced, and the evil caused by its introduction have been done, it becomes a question whether it is well to proceed with the Bill or to withdraw it. The advice which, after careful consideration, I give to the Government is to withdraw the Bill. I do not believe that the passing of the Bill would in any way tend to allay the irritated and exasperated feeling to which it has given rise. On the contrary, I regard it as certain that the passing of the Bill would be followed by Native demands for further concessions and further irritation. Mr. Evans called attention to the possible effect on the public mind, had the unfortunate case of Mr. Meares, which it fell to me to try, been tried by a native officer. In that case my judgment

was confirmed by the High Court. I will suggest for consideration what the feeling would have been had the case of Mary Donnelly, tried by the magistrate of Howrah for the re-use of a used postage stamp, in which the sentence of imprisonment was reversed by the High Court, been tried by a Native magistrate.

I have, &c.
(Signed) A. SMITH.

LETTER No. A. from the MAGISTRATE of Balasore to the COMMISSIONER of the ORISSA DIVISION, Cuttack, dated Balasore Magistracy the 14th May 1883.

In reply to your No 193, dated 7th April 1883, I have the honour to write as follows :—

2. Mr. Beadon has consulted the executive engineer (Mr. J. Apjohn) in order to ascertain the feeling of the English residents of the district, and the Kumar Bykanth Dé for the feelings of the Native residents, and the Reverend Mr. Coldren (an American missionary) for those of the Native Christian community. I send you copies of their replies. It is very striking and noteworthy that though Mr. Coldren, their pastor, is in favour of the Bill, the Native Christians are opposed to it.

3. As to the question whether any administrative inconvenience at present arises from the exclusion of Native covenanted civilians from the power of trying European British subjects, I have no hesitation in replying in the negative. The Native view of the case boldly asserts that such inconvenience has arisen; but totally failing to show a single instance of it, is obliged to content itself with remarking that there have been two cases brought against Europeans in Balasore, and that the then magistrate of the district might possibly have been a Native. That this is all they can say is, I think, quite decisive on this particular point. Nor am I of opinion that there is any prospect of such inconvenience arising in the future from the given cause. I think so not only because of the great rarity of cases against Europeans, but because I do not see that their occurrence would cause the slightest inconvenience to anybody. The Native argument here is that wherever the magistrate of the district is a Native, the present law leaves the English practically free of all law, because their prosecution would be troublesome and costly to a prohibitive degree. I need not say that this is certainly not the fact. It would neither be difficult nor costly to try an European committing an offence in Balasore, and most assuredly no European who lays himself open to the law need have the slightest hope that he will escape prosecution at the hands of a Native because of the difficulty or expense. Moreover it is taken for granted, not only in the Native opinion I enclose, but in all the arguments for the Bill that I have ever seen, that if the district magistrate is not empowered to try Europeans, no one in the district can try them. But this is transparently fallacious and erroneous. Whether the law passes or not, it would be, in my opinion, at once impolitic and dangerous to the State, as well as manifestly unfair to any European who might chance to be in trouble, to leave any district without so much as one European justice of the peace, who need not of course be the magistrate of the district. That any district in which there is a sufficient number of Europeans to render charges against them a matter of fairly frequent occurrence, should be left without any justice of the peace, would be so gross an instance of mal-administration, that I cannot believe it possible. Such a disregard of the dangers to which Europeans are known to be subject, in a country where they are not liked, and in which conspiracy and perjury are rampant, and where a false charge is the ordinary weapon of offence, would be a grave public scandal, which, if it ever occurred, could be remedied by a stroke of the pen.

4. As for sessions cases, I would point out that there certainly is no difficulty whatever in having them tried. I cannot understand how anybody can have been found to urge, as fatal to the existing law, the astonishing objection that on some few occasions it may be necessary to require the parties in a sessions case to take a railway journey of a few hours; for any inconvenience that can be so incurred must be absolutely insignificant in itself, and must become completely obscured and imperceptible when placed against the other alternative of subjecting the accused to trial in a court that he sincerely

mistrusts, and in which the whole of the ruling class in India, who are his fellow-countrymen, will never believe that he has been justly condemned.

5. I am the more astonished at the immense stress laid upon this singularly inefficient argument, because it is applied in so very one-sided a way. I

have just left a district* in which no sessions trial at all has ever been held for very many years—a district in which everybody concerned

* Pooree.

in a sessions case is required and compelled to proceed to the next district, without any help from a railway, over a route that is always long and very often difficult. This is an arrangement that has affected Natives only, but has passed wholly unchallenged by Natives or by anybody else, and it is an arrangement made on the grounds of the public interest, by the Government which now argues, when an Englishman only is concerned, that he must in his own interests pocket his prejudices and his national pride, and submit himself to the jurisdiction of a court in which he has much less than no confidence, because he will thereby be saved from a railway journey (perhaps in the hot season) to the next district.

6. In fact the argument that the amended law confers benefits on the European is mere futility. The Europeans alone can be, or can have the right to be, the judges of that; and if they think, as they most certainly do think, that it is not a benefit to them, why, then, to them it is none. "There is nothing good or bad, but thinking makes it so." If an Englishman lying under a criminal charge prefers to have a fair trial, plus a journey, rather than a trial that he believes (rightly or wrongly) will be before a court prejudiced against him, minus a journey, then it is futile to argue that it is a benefit to compel him to the latter alternative; and, moreover, the thing is as wrong as the argument is futile, and is also as unwise and impolitic as it is wrong. You will see that the letter of the Native advocates of the Bill uses the argument in another form copied from the debate on the Bill. The case is put that the master of a ship might want to bring some of his English crew before a court, and find no court in the place. The captain would have most just cause of complaint against the Government, which either neglected or refused to appoint a justice of the peace in any port frequented by British seamen. But that simple and easy remedy (which avoids the very serious administrative inconveniences that would most assuredly result from the trial of a rough English crew before a Native court) is not sought to be applied. The course proposed instead, is to deprive the captain and his crew against their wills, of their existing legal privileges, and to tell the captain that he may (if he dares) try his case in a court in which neither he as accuser, nor his crew as accused, have any confidence; and must himself submit to be tried there whenever his *serang* or *tindal* may bring a true or false charge against him, and then while the captain is protesting in loud anger and unmistakeable dismay that this last state is infinitely worse than the first, the advocates of the Bill are not ashamed to declare that the benefit done to the captain is an important argument in favour of the Bill.

7. Then there is the "stigma" argument. It is claimed that it is a "stigma" upon the Native magistrate that he is not allowed to try an Englishman. The Natives now inform us that, to them, stigmas consequent merely on the accident of birth are abhorrent and intolerable; but what an amazing statement is this from the great body of the Natives of this country? Surely their sense of humour must be greatly tickled while they urge this hitherto unsuspected national characteristic of theirs as rendering the amended Code imperative, and surely their laughter amongst themselves must be heightened by some feeling of contempt at the success of their plea. The fact is that the great body of the Natives have the very highest reverence for, and social belief in, the advantages of stigmas attaching to the accident of birth. They would fight and die in their defence while themselves labouring under them, and we could not more surely alienate them from our rule than by endeavouring (for we should never succeed) to remove them by legislation. They not only place all Europeans under the most contemptuous stigmas merely on account of their race, but they subject themselves to similar stigmas and to social or civil disqualifications of the severest kind, all dependent on the mere accident of birth. The fact is that it is the exact reverse of the truth that the Natives cannot tolerate such disqualifications, while it is the

exact truth that they ~~never~~ mean to forego them when they themselves are concerned. It is the Natives, and not we, who have raised our race as an absolute and impenetrable barrier between us and them; it is the Natives who, in spite of precept and example, continue to weigh down their fellow countrymen and co-religionists with heavier and still heavier chains of caste contempt, restrictions, and disqualifications, the lower we go down in the social scale. And the Natives fully intend to maintain this terrible and evil system of birth disabilities both against us and against their own countrymen. What they really want is that they shall share equally in every privilege of the European, while admitting the European to no single one of the privileges peculiar to the Natives. They wish to see the meanest Native put on the same footing as the European, while that Native is left in the bondage he was born to as regards his fellow-countrymen. They want to see power accreting in Native hands, while it is diminishing in those of Englishmen. They want to take all they can get, and mean to give nothing in return. In their land the Eastern and Western worlds have met, and co-existence is possible only if there be much of forbearance, much patient putting up with "stigmas," much compromise and give and take. The foolish, and in its nature impossible, wish of the Natives is that the Western world should give up being the Western world, and conform wholly to the unchanged East; and they will adopt just so much of the passwords of Western civilization as will suit their purpose, and no more. Disqualification by reason of birth is intolerable just so far as it may leave a fanciful and insignificant "stigma" on the Native; but nevertheless his birth must for every disqualify the European from even social association with the Native, and must continue, to the end of time, to hamper, degrade, and make life hard and difficult to the great masses of the Natives themselves. It is conspicuously certain that this is all that the Natives want or will endure to have. They know better than to put the proposition in all its naked grossness; but under a false assumption of a liberality hateful to their religious feelings and social habits, they are adroitly using the cry of the "equality of races" to effect their purpose. Nor will they allow Government to effect anything more. Their own caste restrictions and disqualifications must be left untouched at our peril.

8. Nor can I say that this lopsided view of the doctrine of equality of races is confined to the Natives. The one plea for this change of law which is serious, respectable, and strong, is that it wipes out a race disqualification. It is urged here and in England, by the advocates of the Bill, that it is nothing but a part of a fixed and settled policy to abolish race distinctions; but I see no signs save of a fixed and settled policy to make them. The Government has long been resolved to act, as regards the Natives, on the principle that one man is as good as another; but in more recent days it has gone further, and has put into action the Irish addition to that sentiment—"and a good deal better too." I am most firmly convinced of the truth that it is wrong of the State to make unnecessary race distinctions. I have no doubt whatever that they are politically dangerous as well as unjust. I hold that *the only* constitutional and statesmanlike course for the Government of this country to adopt is to throw all offices of Government open to all Her Majesty's subjects, on equal terms, without distinction of race, colour, or creed, simply letting the best and fittest man win. It is for this reason that I view with serious alarm the manifest intention of Government to show favour and preference to the Natives, as Natives, not merely by the admitting them through doors specially opened for their races only, but also by actually disqualifying men of English birth. The Englishman can enter the Civil Service only by open competition; but this sole entrance is narrowed by the throwing open of another door for Natives only, from which every Englishman is barred by reason of his race. There are many appointments much coveted by Englishmen (especially those whose permanent home is in India), which are in the gift of the various Governments in India; but an order is issued from England which leaves those Governments unhampered in the bestowal of those appointments on Natives, but prohibits their being given (with a very few exceptions, just "for the present") to any Englishman because of his birth, without the express sanction of the Secretary of State. At the very same time that this Bill is put forth on the avowed plea that it wipes out a race disqualification (at that very same moment of all others!) the Government issues an order

establishing a race disqualification for Englishmen (even for Eurasians) in the matter of admissions to Roorkee College. And the cry from England becomes daily more imperative for the greater employment of the Native (which is the further disqualification of the European by reason of his birth), while the acquiescent response from India becomes more and more willing. All this may possibly be very right. I know well how very difficult the subject is. I know that Her Majesty's subjects in India are *all* (whether of pure or mixed race) over-weighted (by the fact of their residence here) in the race with competitors trained in England, and I think it simply just that, for them *all* (and not merely for some of them) the weights should be adjusted so as to make the race fair. I think that where it is proper to make appointments in India by selection, it is right that selection should be made in accordance with the fitness of the candidates in the first place, and also with some reference to the numerical proportion of the various races in the second; but certainly never by the actual exclusion of any. I am not in the least afraid that in a race in India, under the simple condition of a fair field and no favour, the Native candidate will not hold his own against the world. I see no reason whatever for protecting him by making a contemptuous race distinction in his favour, as if it was hopeless to expect him to win on his merits; and if that were hopeless, I should not go out of my way to employ a cheap and bad servant, and at the same time alienate the only class that maintains us in the country. But at the same time it is not for me to judge, and I most readily acquiesce in the decision of the responsible Government whose duty it is to decide, and who decide to handicap and disqualify the Englishman. They have strong arguments on their side, and I neither deny that they may be right, nor will I do otherwise than loyally accept their decision. But it will not do for a Government thus working to urge that they have no choice but to act on an eternally true principle that there must be no such thing as race disqualification. I have admitted that race distinctions may be necessary. No man who is more than a library student of the art of government would ever be misled by any sounding phrase about the equality of races. The difference between races is a fact, and will not vanish, like a ghost, at the utterance of a formula. Only the French *philosophe* statesman of the Revolution (or the equally inexperienced and unpractised patriot of India) would ever hope that where Western civilization is grafted upon that of the East, everything can be smooth and homogeneous at the line of union. The practical statesman knows that there must be rough scars and nodosities, and the Government acts upon its knowledge that certain race distinctions, even certain race disqualifications, there must be from the nature of the case. I want no further concession than that. Once admit that circumstances may justify race disqualifications, and the extinction of such a disqualification is no longer a sufficient justification in itself for the proposed Bill. It becomes absolutely necessary to show, also, that the extinction is justifiable and necessary, and it becomes allowable to argue that it is neither.

9. But I have looked in vain for any justification whatever beyond the bare assertion of that *ad captandum* formula on which Government does not, and indeed cannot, consistently act. The smallness of the bone of contention is admitted. That no necessity for any action in the matter has as yet arisen cannot be denied. Any possible necessity in the future can be best and most completely met by the simple plan of having that proper supply of European justices (who need not be district magistrates) which justice and the due protection of our fellow-countrymen in the mofussil imperatively demands, and which our position in a country whose people do not like us, and who would willingly get rid of us, necessitates as an essential precaution. It confers absolutely no benefit whatever upon the Natives, and in fact the whole justification comes absolutely to nothing more than the removal of a purely sentimental grievance from the Native members of the Civil Service. On the other hand, its immediate effect is to plant a grievance (purely sentimental if you will) in the minds of all classes of the English in India. The bare proposal has given rise to a fierce and excessively dangerous contest of races. For 25 years there has been a steady *rapprochement* between the English and the Natives, a degree of cordiality, of closer intercourse, of mutual respect and of toleration for one another's feelings and prejudices, that no one who was in India during the mutinies ever dared to hope for. All the way made

has been lost; it will be a generation before the ground we had made up will be recovered. The Natives love us no more than before, and have real hopes that we are in the humour to be agitated and argued out of the country; and the Government has completely isolated itself by now alienating the whole of the English race in India. It really seems to me insensate conduct to persist in such a course as this for no better reason than that it will enable the Native members of the Civil Service to boast that they, too, have what they unfortunately call the "privilege" of trying Europeans.

10. The true way, and the only real way, of impartially avoiding invidious and unjust race distinctions, is for the Government to show, whenever it is not positively wrong to do otherwise, an equal respect for the strong sentiments and prejudices of all alike—to show that tender respect for the national ideas of the English that has always been shown towards those of the Natives. Where we have the nations of the East and of the West living together, it is not possible, any more than it is desirable, to have a symmetrical legislation—a sort of legal bed of Procrustes in which divers nations can be brought to fit only after they have been painfully hacked about into the same lengths. It is impractical and pedantic to attempt to bring about anything of the kind, as well as unrighteous and fatally impolitic. The truly impartial Government, that really sees the evil of making race distinctions, will not compel one race to give up its most cherished national sentiments in order to remove a purely sentimental grievance from a few members of the other race. It would have been a proper answer to make to Mr. Gupta that he and his fellows must respect the strong English sentiment upon the matter, just as the English, in their turn, have always been required to yield their ideas of right and propriety in favour of strong Native sentiment, when (in either case) nothing more than a sentimental wrong at most is done to others—that the Natives, with their invincibly strong prejudices and exclusiveness on the subject of the privileges of birth, cannot possibly claim any right to the abolition of a single English prejudice on the same subject (if it must be called a prejudice) as to which the English are as tenacious as the Natives themselves—that it was at once the moral and the political duty of the Government to consider the natural sentiments and will of the English as they do those of the Native subjects of the Government, for that it would be as wrong morally and as dangerous politically to force the English to give up a privilege (neither wrong in itself nor injurious to others) merely at the will of the Natives, as it would be to abolish polygamy in India because the English think it religiously sinful and socially mischievous—that it is the duty of English and Native alike to waive many points (even important points, sometimes even matters of right and of wrong) in favour of the sincere national and religious and social prejudices at each other—and that it was the duty of Government, as a wholly impartial Government not favouring one race more than another, to see that each race left all the others in the full enjoyment of their national rights and privileges, to tolerate them all alike, and above all things to refrain from itself taking any part whatever with one race, possessing special privileges, to deprive any other race of theirs. When the Natives really have assimilated the truth of the equality of all peoples, no one will object to their present demand. But Government is not acting rightly or impartially in according to it when it is asked for without any conviction or sincerity, merely in order to secure an invidious triumph over the alien race who rule them.

11. Indeed it seems to me that the principle on which this Bill is based pledges Government to a line of action that it cannot take, does not desire to take, and ought not to take. In the case of the English, the Government proposes to deprive them, against their will, of a legal privilege which is very especially the pride of Englishmen. This forcible deprivation of their privileges invariably excites Englishmen to the most dangerous degree, and is a method of government abandoned at home by the most backward of Tories, and denounced as simply criminal by all liberal politicians. But in India the Government is ready to accept all the consequences of the act, and to run counter to all the teachings of liberal Government (in the case of those who alone are convinced of the truth of those teachings), because they think they must treat a kind of copy-book apothegm as if it was a revelation of the Deity, that must be worked out to its disastrous but logical conclusion. The

truth is that it is not possible to boil down all righteous conduct of affairs into apothegms, and that the too numerous attempts to do so (from the days of the "greatest happiness principle" down to those of the "force no remedy" principle) have invariably landed practical politics in confusion. These apothegms, like proverbs, as false in some cases as they are true in others, and are generally balanced off by some other and contrary maxim. The English are told that, in spite of their refusal to consent, and braving the consequences of their great anger, they are to be deprived of their privilege of being tried before an Englishman, because the Natives would like to try them, and there must be no more race distinctions in our laws and courts. Will the Government go straight on to the end of this line? All Native ladies and a great many Native noblemen are by law exempted from attendance in our courts—a privilege peculiarly one of birth and race, from which every Englishman whatever, even the Prince of Wales or the Viceroy himself, is debarred! It causes at least as much trouble and expense as the trial of an Englishman before an Englishman, and jeopardizes justice by preventing important witnesses from being subjected to examination in open court. Will the Government abolish this national privilege of the Natives on account of administrative convenience and the eternal truth that all race distinctions must be banished from our laws and courts? Most certainly, and most rightly, not. If it be argued that the matter is but a trifling matter in itself, doing wrong to no one, and causing no material inconvenience to any one, I acquiesce, but ask for the same consideration towards the English; and for the same reasons in their case. If the argument be couched (as in fact it is) in the terms in which I have said Mr. Gupta ought to have been answered, then I say that an impartial Government that recognizes the duty of making no race distinctions must deal with the English in the same way. But it is not only in insignificant matters, involving sentiment only, and working no ill to any one, that the Government will, and must, refrain from all meddling with the national and social habits of the Natives. The Government which is willing forcibly to wrest a cherished, harmless privilege from the English, at any risk whatever, even though the bare proposal has swept away the work of 25 years of peace and reconciliation, even at the cost of raising a deadly, perhaps fatal, race animosity, of alienating all its English subjects, and of raising hopes in all its Native subjects that at last they may get rid of our Government, will be in a bad position indeed if it allows (merely because of its tenderness for the Native susceptibilities) the continuance of some Native laws that are a great deal worse than merely morally wrong. At the present moment the law allows a Kulin Brahmin, in even his old age, to marry as many hundred infant females as he and their parents choose. Will the Government interfere to protect these helpless infants? They will all become infant widows and be condemned, against nature, to a life of celibacy. Will the Government protect these children from this cruel and unnatural wrong? In time some of them will become mothers, and under pressure of that abominable law which we permit, and of the cruel society, whose law it is, they will extend the effects from themselves, and murder their infants. Will the Government, to prevent this form of infanticide, hesitate to punish, under a stern law, the women whom they have done nothing to protect in their helpless infancy from the cruel law of which their crime is but a natural consequence? The Government will simply do nothing of the kind. It will decline in any way to interfere in this or other cases of evil, and it will give plenty of reasons why it is not right for Government to interfere with the Native law of marriage (even when it works cruelty and crime like this), and not proper to incur the violent exasperation of its Native subjects. I by no means say that the Government are not quite right in their abstinence, and in waiting for Native advance in social and political knowledge in order that they may have Native co-operation in redressing even such evils as this. But if such questions of right as this can be righteously laid on one side, for the present, where Natives are concerned—if the Government, in fact, can, in spite of what is plainly right, swallow this enormous Native camel, what is the meaning of their straining at the very tiny English gnat which does no wrong and hurts nobody? If they do not mind setting Europeans and Natives at deadly feud, and running the hazard of rebellion and bloodshed to secure mere symmetry where the English prejudice is concerned, how shall the Government be excused for refusing to encounter the same risks where it

is a highly important question of protecting children from a virtual deprivation of their civil rights, of saving Native women from an unnatural and cruel existence, of putting down that form of infanticide which is rendered most prevalent by the Government's acquiescence in the Native law of abolishing that class of criminal which is most discreditable to every Government, viz. the criminal with whom all good people sympathise. The fact of the matter is that practical statesmen cannot work out dogmatic maxims to their logical conclusion, and that even the plainest right must be left out of action when people are not yet fit to perceive it to be right, and when its enforcement would bring about chaos instead of advance. When the advocates of the Bill have proved that the English privilege is an anomaly, and that their Bill is clearly right in principle, they have proved very little indeed in its favour. The privilege does no perceptible harm, its abolition does no perceptible good to any one; but the Bill to abolish it has already, in the mere form of a proposal, been the greatest misfortune that has occurred in India since the mutinies. Less reason has induced, and does still induce, the Government to acquiesce in immeasurably greater anomalies, and even in gigantic wrong.

12. And truly it is an extraordinary thing to think of the enormous force of argument that is supposed to lie in that word "anomaly." "Why" (it is triumphantly urged) "the thing is an anomaly," and then the unfortunate other party to the controversy is supposed to have before him only two courses—either to prove that it is not an anomaly, or to yield absolutely. What sort of mind is it, I wonder, that is so instantly enfeebled by the sound of the word "anomaly?" Are we all of the intellectual calibre of the fish-wife who was routed by the word *parallelopipedon*? As I said before, here in India the swift current of Western civilization has come tumbling into the stagnant basin of Eastern civilization, and who in his senses supposes that there can be freedom from anomalies? Who is there, that is capable of forming intelligent hopes for India, that does not *hope* for many and many anomalies? Before I am asked to be afraid or ashamed of an anomaly, I must be convinced that it is not one of which I ought to be proud; for (strange as it may seem) there are plenty of anomalies in this country which are essentially right, and which ought to be proudly maintained, as well as a few which wise people are sorry to see. I know of nothing in all history that is a finer and prouder anomaly than the position of the Englishman in India. He is a member of a liberty-loving race, who has come here with the full determination to drag an effete people out of the depths into which slavish institutions and habits have sunk them. And because free institutions cannot be as yet extended to those whom he delights to call his fellow-subjects, he himself cheerfully and contentedly has divested himself, one after another, of the special and peculiar privileges of freedom which he and his fathers have slowly won; which he believes in as he believes in nothing else; which he prizes, and is justly proud of, as he prizes and is proud of nothing else; and for which he would fight and die rather than yield them up to force. He has resigned all his rights to take a part in the Government; he does not even look for any representative among his rulers; he submits to laws that he has had no voice in the making of, and of which he disapproves; he submits to taxation that he has not been asked to consent to, and which he thinks excessive and wrong in principle; he even allows himself to be sent to prison as a criminal for what, in his own country, is not even a misdemeanour; and whilst he has given up things in all directions till he has left himself, though a free-born Englishman, even much less a member of the State, much less an influence in the Government, than a French citizen under the second Empire, he has never asked in return that the Natives shall give up so much as a single one of the many privileges which are peculiar to themselves. Such a people, capable of such noble self-restraint and self-abnegation, deserve more consideration than they meet with in return from the Natives, and less contumely than they receive from their fellow-countrymen at home—from that section of the English community which most loudly proclaim their love of freedom. It is such a people as this that an English newspaper (Radical) publicly proposes to "crush." It is of such a people as this that a distinguished politician and minister (Republican and Radical) said, in a speech that has an unpleasantly servile and courtier-like twang, that he greatly approved of the Prince's visit to India, because the English there would have an opportunity

of learning how to behave themselves properly. It is such a people, too, that the Government now insists on depriving of the plain and just privilege of every man accused of a crime—of being tried by his peers, in a court in which he has confidence; who are told by their Government that their sincere (I do not at all say their well-grounded) mistrust of those courts shall receive not the slightest consideration; that their wishes on the subject shall be put aside; and that they shall have their legal privileges wrested from them in spite of themselves, not because it does any harm to any human being, but because the Natives, who have never given up anything, are anxious to see the English, who have voluntarily resigned so much, compelled to give up more. I must say that I think the treatment of the English in India in this matter by their Government is such an anomaly as should never have occurred, and as may lead to a most dangerous state of exasperation and desperation if persisted in. At all events, I am sure that in the present exasperated state of all men's minds, English and Native alike, it would be simply inviting an outbreak to press the matter. If the Bill is passed in the present temper of people, I do not believe that fair trials will be possible, and I do fully believe that there will be unseemly and violent collisions between the races. There is no saying into how large a conflagration a very little flame may now be at any moment fanned, and to pass the Bill for some long time to come would be to incur a degree of danger that the Bill cannot possibly justify.

I have, &c.,

(Signed). T. J. C. GRANT.

LETTER from KUMAR BAIKUNTHA NATH DE to the MAGISTRATE of BALASORE,
dated Balasore, the 23rd April 1883.

WITH reference to your memorandum No. 522, dated the 11th instant, asking for an expression of opinion of the Native gentlemen of the district on the Criminal Procedure Code Amendment Bill, I have the honour to state that I called a meeting which was attended by a large number (over 300) of Native gentlemen, who, one and all, voted in favour of the amendment. I submit below the purport of the resolutions arrived at. Actual inconvenience has, in the opinion of the meeting, arisen from the exclusion of Native covenanted civilians from the power of trying European British subjects on criminal charges. The meeting wishes to show, by one or two instances, the way in which the existing Criminal Procedure Code affects this district. Some days ago, a charge was brought against a British-born subject attached to the Coast Canal. That gentleman was found guilty and fined. Had the offence been committed during the incumbency of Mr. Dutt, the complainants would have suffered much. They might have been prevented from bringing any charge at all against the gentleman in question on account of the additional trouble and expense they would have been put to for the trial of the case by some British-born subject. It would thus appear that the European offenders of the district would enjoy to some extent immunity from the operation of the criminal law, should the district magistrate happen to be a Native. That the same remark applies to other districts of Bengal similarly circumstanced is a fact which hardly needs pointing out. In the ordinary course of things, the Native civilians would become magistrates of some districts, and the people of those districts would suffer simply through this anomaly in the law. Besides the inconvenience to the Native community, there are other disadvantages arising from the existing law, which it will not be out of place to dwell on here. In the month of January last, the magistrate of this district had to try some sailors who had acted against the orders of their captain. To what trouble the captain would have been put had Mr. Dutt been here? We might multiply instances; but those mentioned above will be sufficient.

2. The principle of equality in the eye of the law has been already recognised in the bestowal of the power by which Native Moonsifs and subordinate judges try cases in which British-born subjects are interested, and not a single case has been found, or can be found, in which failure of justice was ever alleged to have taken place. If Native judges can be trusted to administer the civil laws, the meeting sees no reason why those Natives who have won their way into the Civil Service by exceptional energies and

abilities should not be entrusted with the administration of criminal justice as regards Europeans.

3. The Presidency magistrates, be they Europeans or Natives, have the power to try British-born subjects on criminal charges; why should not, then, magistrates, if they happen to be Natives, have the same power while in the mofussil?

The law, as it now stands, makes it necessary for the Government to confine Native civilians to backward districts, such as the swamps of Backergunge, &c. This, the meeting thinks, is against the declaration, in 1858, of Her Majesty.

In conclusion, the meeting urges once more the necessity of the amendment.

LETTER No. 1052, from the EXECUTIVE ENGINEER of the BALASORE DIVISION to the MAGISTRATE of BALASORE, dated Balasore, the 16th April 1883.

IN reply to your No. 527 of the 12th instant, requesting an expression of opinion from me on the proposed amendment of the Code of Criminal Procedure, I have the honour to give it as follows.

As an officer of the Public Works Department, I think that the amendment, if passed, would cause much inconvenience in the event of a Native civilian being sent to a district in which European subordinates were employed, as these men now find it hard to hold their own against the petty persecutions of persons who they have made their enemies often through the faithful discharge of their duty, and, however fair a Native magistrate might be, the common people would not believe in his impartiality, and the Englishman having lost prestige, would be regarded as fair game by all *budmashes*.

As a loyal European British subject, I most respectfully, but earnestly, protest against the subjection of the hitherto ruling race to the criminal jurisdiction of one which, however intellectually able, is, through hereditary want of physical and moral courage, unfit to have it.

As a husband and father, I protest against my wife and daughter being made subject to polygamists and men who, from training, are utterly incapable of understanding Western ideas of the status of women; and I regret the personal inconvenience I shall be put to in being obliged for the future to keep my family in England, whenever serving in a district where a Native would have jurisdiction over them.

I have, &c.,
(Signed) J. W. APJOHN,
Executive Engineer.

LETTER from the AMERICAN MISSION, Balasore, to the MAGISTRATE of BALASORE, dated Balasore, the 18th April 1883.

IN reply to your Memorandum, No. 523, dated 11th April 1883, I have the honour to state that I have made inquiry as to the opinion of the Christian community, and find a large majority of the leading members not in favour of having Native gentlemen try Europeans.

As to myself, I beg to state that if the Native magistrate has passed all the requirements of Government to entitle him to administer the functions of that office, I see no reason why he should not be granted the privilege of trying Europeans, especially as in case of any seeming injustice, there is an appeal to a higher court.

I have, &c.,
(Signed) M. J. COLDREN.

LETTER No. 319, from the OFFICIATING MAGISTRATE of Pooree to the COMMISSIONER of ORISSA, Cuttack, dated Pooree, the 26th April 1883.

WITH reference to your endorsement, No. 192, dated the 7th instant, asking for an expression of my opinion on the Criminal Procedure Code Amendment Bill, I beg to say that, considering the position of us Native civilians in respect to this Bill, and having regard to the language that has been publicly held towards us, I should have preferred to keep silent; but Mr. Godfrey,

the sub-divisional officer of Khorda, has, while in charge of this office, left a note on the Bill, and, as I happen to disagree with him, I cannot send it up without a few remarks of my own.

2. Mr. Godfrey says :—"The principle involved—that of subjecting Europeans to the criminal jurisdiction of Natives of this country—is to a certain extent a novel one, and before it is generally introduced, the community whom it affects have a right to be consulted. A great deal has been written on the subject, and there is very little to be urged that is new. The voice of the European community has declared loudly against it, and, in my opinion, with good reason. I further believe that the introduction of the Bill is, under present circumstances, most impolitic.

"Neither can I see the necessity that exists for the measure; the number of Native civilian officers who would come within its scope for many years is small. There are many districts in Bengal where the contingency of having to try a European for an offence very rarely occurs, and to such districts Native civilians may, without objection, be deputed. I very earnestly hope that the proposed measure will be withdrawn at once."

3. It seems to me that the principle involved is not that of subjecting Europeans to the jurisdiction of Natives of this country, but that of removing such disqualifications of the judiciary as are based on the accident of birth and race. Now this latter principle is by no means a new one, having been affirmed by Parliament many years since, and carried out to a considerable extent by the Government of India. The Bill is only the outcome of an extended application of that principle.

4. The indignation shown by the non-official European community against the Bill does not in any way affect its merits. No one likes to give up a privilege without a struggle; but race prejudice, I am afraid, has to account for a great deal of the present agitation.

5. Were the Government of India professedly despotic, no one could have questioned its consistency if it thought fit to perpetuate distinctions of race, creed, and colour. But having practically declared, as it has done more than once, that fitness should be the only test of qualification, it is perhaps too late to question the principle of the Bill.

As for administrative inconvenience, this is very much a matter of opinion, and it would be difficult to say what amount of inconvenience would justify legislation. By careful selection and special arrangements, much of the inconvenience may be obviated; but still it scarcely adds to the prestige of a district officer to have withheld from him powers which his subordinates may, under certain circumstances, possess. The number of Native civilians is at present small; but it is scarcely fair to them that they should be excluded from nearly all the best districts simply by reason of their birth.

I have, &c.,
(Signed) K. G. GUPTA,

LETTER from the UNDER-SECRETARY to GOVERNMENT, Bengal, to SECRETARY to GOVERNMENT of INDIA, Legislative Department,—(No. 879, J.D., dated 31st May, 1883).

In continuation of my letter No. 851J.D., dated the 30th instant, I am directed to forward, for the information of

* Dated the 24th May, 1883, and the Government of India copies of a demi-official letter* from the Commissioner of Patna, submitting the opinions of certain Native officers and gentlemen of that division on the Bill to amend the Code of Criminal Procedure 1882.

(Signed) W. D. BLITH.

Enclosures referred to in preceding Letter.

DEMI-OFFICIAL LETTER from the COMMISSIONER of the PATNA DIVISION, to the PRIVATE SECRETARY to the LIEUTENANT-GOVERNOR of BENGAL.—Dated Bankipore, the 24th May 1883.

MR. THOMPSON asked me to send copies of the opinions of the Native gentlemen here who have been consulted with regard to the Criminal Procedure Code Amendment Bill, and I enclose them for the Lieutenant-Governor's perusal.

I send also Grierson's letter to me, forwarding the written opinion of the leading non-official gentlemen of Patna city.

I have, &c.
(Signed) F. M. HALLIDAY.

DEMI-OFFICIAL LETTER from the COLLECTOR of PATNA, to the COMMISSIONER of the PATNA DIVISION, dated Bankipore, the 23rd May 1883.

IN addition to the written opinions of Natives concerning the Criminal Procedure Code Amendment Bill, which I forwarded to you with my report, I had also the opportunity of consulting the leaders of the Native non-official community on the subject. As already reported, they were to a man against the Bill.

You expressed to me, the other day, a desire to get the written opinions of these gentlemen, and I enclose them herewith.

Kuar Sukh Raj Bahadoor and Ray Jay Kishen are the leaders of the Hindu community here, and Nawab Sayyad Wilayat Ali Khan, C.I.E., is well known as the leader of the Mahomedans of this part of the world. The opinions of these gentlemen may therefore be taken as that of the mass of the Behar community.

I have, &c.
(Signed) G. A. GRIERSON.

LETTER from KUAR SUKH RAJ, Bahadoor, to the COLLECTOR of PATNA, dated Patna, the 22nd May 1883.

WE are, as we have said before, of opinion that, for certain reasons, we do not like the Ilbert's Bill to be passed into law.

LETTER from RAY JAY KISHEN to the MAGISTRATE of PATNA, dated Bankipore, the 22nd May 1883.

HAVING been asked to give my independent opinion on the "Criminal Procedure Amendment Bill," I have the honour to state that as the said Bill is not calculated to secure any substantial advantages or emoluments to the Natives in general, with the exception of gratifying the vanity of a few Native civilians, by empowering them to try Europeans; and moreover, as it would create race feeling, jealousy, animosity, and hatred between the races that have hitherto lived in peace and amity with each other, it is unnecessary and should not be passed.

LETTER from NAWAB SAYYAD WILAYAT ALI KHAN, C.I.E., to the COLLECTOR of PATNA, dated Patna City, the 23rd May 1883.

ADVERTING to your demi-official letter of the 21st instant, requesting me to give my opinion on the Ilbert's Bill, I beg to say that, as far as I have gone through the histories, I have always found the conquerors thinking themselves superior than the conquered. In my opinion the British will be heart-broken and will always remain fully against the Natives if the Bill will be

turned into Act; and as the mutual affection between the conquerors and the conquered which is being increased has not come to limits of perfection, and as the unsatisfactory remarks are being brought forward by the conquerors, I am quite sure the passing of the Bill into Act will place a great dissatisfaction between the conquerors and the conquered.

Baboo Jadub Chundra Ghose, *Deputy Magistrate and Collector, Sarun*—highly approves of the principle of the Bill, and also considers the amendment necessary to prevent future administrative inconvenience, and the anomaly of a superior officer being excluded from a jurisdiction which may be possessed by one of his subordinates.

Baboo Ram Anugra Narain Singh, *Deputy Magistrate and Collector, Sarun*—approves of the principle of the Bill, and considers that, though every Native civilian may not be qualified to try Europeans, they should as a class be eligible for selection by the local Government, and that there are sufficient safeguards to prevent any miscarriage of justice. He thinks that no administrative inconvenience has yet arisen, but such might arise in the future if the law were not amended.

Moulvie Azhural Huq, *Deputy Magistrate, Sarun*—is in favour of the proposed amendment of the Criminal Procedure Code.

WE, the undersigned Native magistrates of Durbhunga, have the honour to submit the following report on the Civil Procedure Amendment Bill now pending in the India Council, in compliance with your order of the 13th instant, and with reference to Government of Bengal letter No. 1518, dated 27th ultimo.

2. Opinion has been invited on three points, namely (1) the principle of the Bill; (2) any administrative inconvenience already felt for want of jurisdiction in Native civilians over British European subjects; and (3) any such inconvenience likely to arise in future. We shall briefly dwell on these points in the same order in which they have been mentioned.

3. We beg to express our fullest sympathy with, and appreciation of, the object of the Bill, and its abstract principle is not likely to be questioned by any section of the Indian community. Apprehensions may be entertained regarding the practical result of the change in the present state of the Indian society. In our opinion such apprehensions are only imaginary, as they are not based on experience and sound reasoning. As covenanted Native officers alone are to be vested with additional powers, the only matter for consideration is whether they are fully qualified to exercise them. To this subject we beg to devote the following two paragraphs.

4. No question has been raised that we are aware of regarding the general acquirements and legal knowledge of the Native covenanted officers. Most of them have entered the service by open competition, and Government is responsible for the qualifications of those appointed under the nomination system. Exception can only be taken on the ground of unfamiliarity of the Natives with the English mode of life and thinking, which is an important condition for the proper understanding of a case in which a European is concerned. We submit that such a familiarity is tolerably acquired by native covenanted officers by study of English literature from infancy, by contact with the Anglo-Indians, and by visits to England; while they have an advantage over European judges, in that they can better understand the surroundings of a case occurring in India.

5. Anticipated partiality of Native officials towards their own countrymen may be another ground of objection to their being vested with powers over Europeans. The past experience of the character of Native officials removes all doubts on this point. Natives have hitherto tried civil suits instituted by or against Europeans. They have also tried criminal cases in which Europeans are prosecutors, or their servants in a representative character stand accused. No display of partiality has ever been reported in respect to the trial of such cases. If any party in a criminal case enlists the sympathy of the court, it is the accused; and when a Native is the prisoner in the dock,

standing in fear of punishment, cannot draw the sympathy of a Native judge, there is not the least chance of his doing so when he comes forward as a prosecutor. The fact is that party feeling and race antagonism is foreign to the spirit of the Indians.

6. According to our information, the Britons do not enjoy the privilege of being tried by their own countrymen in the civilized countries of Europe and America, nor in the presidency towns of India. They do so in other parts of the world where the laws of the land are materially different from those of the United Kingdom, and the law officers beyond the control of the British Government. In India the case is not similar. Here the criminal law has been framed in imitation of the English law, and the law officers are appointed by the British Government, and they hold their appointments subject to the approbation of the said Government. We know that the idea of appearing as an accused before Native judges is rather revolting to the present state of feeling in the Anglo-Indian society; but we trust this feeling will wear out in course of time, if the Bill is actually passed.

7. No inconvenience has been felt in this district for want of jurisdiction of Native civilians over Europeans, for the simple reason that there are no such officers in Durbhunga. Mr. Brojendro Nath Dé and Kumar Rameshur Singh were posted for a time to the Sudder station, where there were also European covenanted officers who tried all cases of this kind. Moreover there have hitherto been so few criminal cases against Europeans in the Durbhunga district, they could be decided by European magistrates without the assistance of Native officers.

8. The state of things described in the last paragraph cannot continue for long if events are allowed to take their course. Under the existing rules, 20 per cent. of the appointments in the Covenanted Service will be gradually filled up by Natives under the nomination system, and many besides will enter the service by open competition. These officers will in ordinary course of promotion be placed in independent charge of sub-divisions, districts, and sessions divisions. Inconvenience will then be felt if any restriction be imposed on their jurisdiction. On the other hand, European population in India is steadily increasing. Proportionately with the increase of population, cases against Europeans must also increase. In time such cases will be so numerous that the staff of European officials in many districts will not be able to decide them with due regard to their other duties. This increase of European population in India is beneficial both to India and England, and should by all means be encouraged. India wants capital to develop its resources, and its people force of character so necessary for progress. Englishmen in India can import capital and set an example of steady business habits. England has more money and more men than she can advantageously utilize within her maritime boundaries, and India opens to her a new field of enterprise.

(Signed) NASSIRUDDIN.
GOWHUR ALI.

LETTER, No, 4B., from SYED MOHAMED, Deputy-Magistrate, to the MAGISTRATE of MOZUFFERPORE, dated Mozufferpore, the 24th April 1883.

WITH reference to your memorandum No. 714, dated 4th instant, forwarding a copy of the Government circular No. 1518J., dated 27th ultimo, and asking my opinion on the proposed Bill to amend the Code of Criminal Procedure, 1882, as far as it relates to the exercise of jurisdiction by Native magistrates over European British subjects, I have the honour to submit as follows:—

This subject has been so fully and carefully discussed from different points of view, and is still being so warmly discussed by eminent administrators and high authorities, both here and in England, and so many arguments have been advanced by its supporters and opponents, that I consider it perfectly needless to advance a single argument in support of my own humble views on the subject, which is that the Bill is a perfectly just and equitable measure; and I believe there is a consensus of opinion among all educated Natives on this point throughout India. I look upon this legislation as a natural out-

come of the fundamental policy of the British Government in India, and that it shall be perfectly harmless in its effects when passed into law. It is quite clear, from the facts stated by Dr. Hunter in his speech, to which I am obliged to make a reference, that administrative inconvenience has arisen, and that much inconvenience will surely arise in future, as the number of Native covenanted civilians would increase in the service, and in course of time they would come to be placed in large numbers in charge of districts and sub-divisions. The mass of population looks upon it, as upon all other legislative measures, with indifference, as they are incapable of understanding such measures.

MOULVI ABDUL JUBBAR.—The principle of the proposed amendment of the Criminal Procedure Code is generous. It aims at equalizing the powers of all civil servants employed in the administration of law and justice in India, and who have all been admitted into the Civil Service on proof of merit and ability. It will be a standing slur on the position of the Native civilians if they are, on the ground of nationality, excluded from the exercise of functions which may be discharged by their subordinates. Native officers, inferior in position to the civil servants, have for many years tried Europeans in the Presidency towns, and no complaint has ever been seriously made that they have abused their power. It cannot be gainsaid that if Native civilians, when they attain the grades of district magistrates and sessions judges, are excluded from trying European British subjects for offences committed within their territorial jurisdictions, much inconvenience to parties and witnesses will arise, and in many cases failure of justice will occur. The trouble and inconvenience of a journey to a long distance from home will induce many to avoid the necessity of being called as witnesses in cases in which Europeans may be on their trial. As to the impartiality and immaculateness of Native officers invested with powers to do justice between man and man, there can be no difference of honest opinion. There may be one or two men whose good faith may be questioned in particular instances; but generally speaking, Native officers are as spotless as their superiors in office. This is not only my individual opinion, but in expressing it I simply echo the verdict of all intelligent Natives. As regards the ability of Native officers, I beg to say that the English of their judgment may not be equal to that of a European; but as a judge of facts a Native endowed with the ordinary share of human intelligence will admittedly be equal, if not superior, to a well-informed European officer. A Native officer may want a knowledge of the habits, customs, and ideas of the Europeans; but undoubtedly he is better qualified to sift Native evidence adduced in favour of or against a European offender. It is not true that Native officers will be prone to receive or unable to detect false accusations against Europeans. Nevertheless, I would not advise the passing of the Bill. There is a general and strong opposition against it. The ground of this outcry is that the Bill contemplates to deprive the European British subjects of their special privilege to be tried by their own countrymen. It is a fact that in the mofussil Europeans have been long tried by Europeans, and I think some administrative inconvenience should be allowed to exist rather than that the special privilege of a nation should be interfered with. Moreover, an ill-feeling between the Natives and Europeans, which the Bill, if passed into law, is likely to create, will be prejudicial to the interests of the country, which at present depends upon the nations of the west, and for material and intellectual advancement.

BABOO DINOBUNDHOO GANGOOLY, *Junior Government Pleader*.—I, and those Natives whom I have been able to consult, agree in thinking that the Bill is sound in principle.

With regard to the administrative difficulty, I beg to submit that, as no covenanted Native civilian had been placed in this district as sessions judge, no administrative difficulty has hitherto been felt.

MOULVI KHODA BUX KHAN, *Senior Government Pleader*.—The change proposed in the Civil Procedure Code does not in any way affect the Native public one way or the other. It is certainly not intended, and it cannot practically attribute any moral or social advancement to the different com-

munities living all over the country. The change is simply intended for a very few Native gentlemen who are members of the Covenanted Service, and whether they are empowered to try the European British-born subjects or not is a question which would not go to touch any other than those who are to be thus tried by the Native civilian. The general public, as far as I think and know of their circumstances, are quite indifferent to this change.

2. The number of the Native civilians is so small that there can hardly be any administrative inconvenience at present. A Native civilian can conveniently commit a European British-born subject to another court held by an Englishman in the very district where the offence is committed, or commit him to the Calcutta High Court for trial without causing much inconvenience to the persons concerned with the case, as, by the construction of the railway lines, travelling is so very easy.

3. The particular community concerned with the change claim their right of being tried by their own countrymen, and perhaps this is the only privilege granted to the English people, and unless there be some great administrative inconvenience, the change at present is quite uncalled for. Natives have privileges as well, and under the custom of the country, they are respected by law and by the courts of justice; and I would therefore submit that such privileges should not be done away with without grave and cogent reasons for doing so, which are wanting at present.

BABOO NOBIN CHUNDER SEN, Deputy-Magistrate of Behar.—I have never been placed in charge of any sub-division where cases requiring the exercise of jurisdiction over European British subjects were likely to occur; the Native deputy magistrates, on account of their legal disqualification to try such cases, and its consequent administrative inconvenience, being excluded from the charge of such sub-division. Nor have I otherwise come across any such case in places where I have served. I am therefore not in a position to express any opinion, based on my personal knowledge or experience, on the principle of the Bill in question, involving such a grave question of Imperial policy. As for general arguments for or against it, they have been publicly expressed in so many quarters, and with so much greater force and ability than I could command, that it would be useless for me to recapitulate them, as they cannot be unknown to you.

LETTER from the SECRETARY to GOVERNMENT, Bengal, to SECRETARY to GOVERNMENT of INDIA, Legislative Department.—No. 896J.D., dated 2nd June, 1883).

IN continuation of my letter No. 879J.D., dated the 31st ultimo, I am directed to forward, for the information of the Government of India, copies of a further letter* from the Commissioner of Burdwan, communicating the opinion of Mr. E. V. Westmacott, the officiating magistrate of Howrah, on the Bill to amend the Code of Criminal Procedure, 1882.

* No. 254, dated the 29th May, 1883, and enclosure.

(Signed) F. B. PEACOCK.

Enclosures referred to in preceding letter.

LETTER No. 254, from the COMMISSIONER of the BURDWAN DIVISION to the SECRETARY to the GOVERNMENT of BENGAL, Judicial Department, dated Chinsurah, the 29th May 1883.

IN continuation of this office No. 204 of the 7th instant, I have the honour to submit copy of a letter No. 851 of the 15th idem, from Mr. E. V. Westmacott, officiating magistrate of Howrah, containing his opinion on the Bill to amend the Code of Criminal Procedure. Mr. Westmacott joined this

division only on the 4th instant, and could not therefore submit his report earlier.

I have, &c.
(Signed) J. BEAMES.

LETTER No. 851, from the MAGISTRATE of HOWRAH to the COMMISSIONER of the BURDWAN DIVISION, dated Howrah Magistracy, the 15th May 1883.

WITH reference to the order conveyed in your No. 50, of the 4th April 1883, I observe that my predecessor, Mr. Collier, has already submitted a report, with the terms of which I have no reason to disagree; but in reading much of the matter published with respect to the Criminal Jurisdiction Bill, I have observed in certain quarters a tendency to represent the opposition to the Bill as being on the part of those Europeans only who are not in the service of Government, and to deduce from the fact that officials have not joined in any public movement against the Bill, the conclusion, which I believe to be quite erroneous, that Government officials are in favour of the measure for giving certain Native officials jurisdiction over Europeans, and for taking away such jurisdiction from a number of European deputy magistrates.

Although I have felt that it might not befit my position under Government to take part in recent proceedings, I must protest very strongly against any assumption that I am in favour of the Bill. In common with almost every official with whose opinion I am acquainted, I object to the proposed measure as much as any European not in the public service can object.

Even if I thought the measure unobjectionable in principle, I should hold that nothing but the very strongest necessity would justify it, arousing as it does, on the part of those whom it is proposed to deprive of the right of being tried by men of their own nation, bitterness of feeling both against the Government and against the Natives on whom it is proposed to confer jurisdiction over them. There is a general feeling among Europeans that they are betrayed by the Government to which they have been thoroughly loyal, and to which they feel that they have a right to look for the maintenance of their valued privileges, of which the one which it is now proposed to take away is not one of the least. As regards the Natives, Europeans who have hitherto been content to do business with them without taking notice of points of moral or social conduct in which they differ, have been suddenly and sharply roused to analyse the feeling which leads them to dislike being subjected to the jurisdiction of Native courts, and have been led to bring prominently forward the faults they perceive, or think that they perceive, in Native character; and this hostile criticism has irritated those Natives who understand it into recrimination, and the utterance of sentiments hostile to Europeans. During more than twenty years' service in India, I have never known such bitterness of feeling between Europeans and the educated Baboos of Bengal, and such disaffection among Europeans towards the Government, as has been aroused within the last few weeks by the proposed measure; and even if there were reasons for passing such a measure, very much stronger than I believe there are, I should think they could hardly be strong enough to justify the risk of causing such widespread irritation.

It is stated that very few Native magistrates or judges would be vested with jurisdiction over Europeans by the proposed measure, and further, that it is not intended to proceed further in the same direction. Natives, however, have declared in their public utterances that they look on the measure only as an instalment of wider concessions to be made to them, and Europeans also suspect that such is the case. Although the present Government may honestly intend to go no further, they cannot bind their successors. If it be once conceded that a few young men who have spent a short time in England are qualified to try Europeans on criminal charges, it will be difficult to deny the qualifications of grey-headed deputy magistrates, who have for many years exercised judicial powers under the guidance and supervision of British officers. Neither Natives nor Europeans believe that the proposed measure

can be passed without further measures of a similar character following in logical sequence.

I am unable to see that the administration of the country would be rendered in any degree easier by the passing of the measure; on the contrary, I foresee the possibility of very serious administrative difficulties arising from the irritation which would be caused by the condemnation of a European, especially of a European female, by a Native tribunal. I do not say that I believe a Native would not try a European justly, but I do say that Native tribunals would not enjoy that confidence on the part of Europeans which is enjoyed by British magistrates. It is notorious that people of the country do not trust the Native courts as they do those presided over by British magistrates, and if this is so, it is not strange that Europeans should share the feeling. The only advantage which I think can possibly arise from the proposed measure is the gratification of the self-love of certain Native officials who consider themselves placed in a position inferior to British officers of equal rank, because they are not allowed to try European British subjects on criminal charges. I do not think this advantage sufficient to outweigh the evil which the proposed measure is already causing.

I have heard of several cases in which Europeans have been obliged to appear before Native courts of justice as witnesses or otherwise, and in which the presiding officer has caused them unnecessary humiliation and inconvenience, evidently with the purpose of exalting himself in the eyes of his own countrymen. The appellate courts, and the general supervision of superior authority, may prevent any miscarriage of justice in the actual decision of suits, but are quite unable to prevent the petty annoyance, unconnected with the actual decision, which may be inflicted by a judicial officer, and which experience has shown that Native judicial officers, especially the younger among them, are prone to inflict on Europeans. In the case of European women, such annoyance might be almost unbearable, and it appears that Europeans have more reason to object to Native tribunals on these grounds than with a view to actual decisions.

I am unable to draw any distinction between Natives who have been to England and those who have not, as I have not observed any special variation from the ordinary Native character on the part of the former. It is not, however, my wish to discuss the fitness or unfitness of Native officials for the exercise of the powers which it is proposed to confer upon them. I think it quite enough to urge the impolicy of pressing a measure which has caused such widespread irritation among European British subjects in India against both the Government and their Native fellow subjects, as I regret to observe to have been aroused within the last few weeks.

I have, &c.
(Signed) E. V. WESTMACOTT.

LETTER No. 1232J.—D. from the SECRETARY to the GOVERNMENT of BENGAL, Judicial, Political, and Appointment Departments, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

Judicial.

SIR,

Darjeeling, dated the 22nd June 1883.

I AM directed by the Lieutenant-Governor of Bengal to submit his opinion upon the Bill to amend the Criminal Procedure Code, to which his attention was called in your letter No. 25C., dated the 17th March last. On receipt of that letter a circular was issued to commissioners of divisions, inviting an expression of their views upon the subject, after consulting selected officers interested in the measure, and qualified to express an opinion upon it. Copies of the replies received have already been forwarded from time to time for the information of His Excellency the Viceroy and Governor-General in Council. This is the first time that an opportunity has been

offered to the Bengal Government and its officers to report upon the Bill; and though the Lieutenant-Governor has little doubt that the impassioned controversy which has arisen since the intention to legislate was declared has strongly influenced opinions on both sides of the question, the fact remains that the general result, as gathered from the replies received, is, both in the number and weight of judgment, decidedly against the principle and policy of the proposal. It appears that, excluding the judges of the High Court in Calcutta, whose reply has been submitted direct to the Government of India, there were 79 officers in Lower Bengal whose reports appear in the published replies; and from as fair an analysis of these reports as can be made, the result is that, while 20 gentlemen approve of the principle of the Bill, and would recommend its enactment, there are 59 who are either entirely against it, or who, accepting the soundness of the theory upon which the Bill is based, object for one reason or another to its being passed into law. Of the 20 writers in favour of the measure, 19 are Natives, and one (Mr. Coldren) is a gentleman connected with the American mission in the district of Balasore. All but one of the 19 Natives are in the public service, and include the two covenanted civilians, now officiating as magistrates and collectors in charge of districts. The others, with two exceptions, one of whom is a Government pleader, are deputy magistrates and deputy collectors in Government employ. Mr. Coldren, to whom reference has been made, is an American; and though in his brief remarks he records his personal support of the Bill, he adds that from inquiries made he finds that a large majority of the leading members of the Christian community under him are not in favour of having native gentlemen to try Europeans. Out of the 59 gentlemen opposed to the proposed legislation, it will be sufficient to notice that the list comprises the superintendent and remembrancer of legal affairs, all the commissioners of divisions, all the district officers and judges who were consulted, and includes Mr. Badshah, the covenanted Native civilian in charge of the subdivision of Goalundo, nine Native officers of Government, eight of whom are in the Uncovenanted Service (most of them being deputy magistrates), and one a Government pleader, besides three native gentlemen in independent positions unconnected with Government employment. Besides these, it is evident that several other gentlemen, whose replies have not been forwarded, had expressed opinions unfavourable to the Bill, and that the non-official European community is unanimously opposed to it. If the Lieutenant-Governor had had any doubts regarding the necessity or the policy of the contemplated legislation before, he must say that they would have been entirely removed by the great weight and numerical superiority of the earnest arguments now adduced in condemnation of the Bill; and he has only, therefore, to say that the opposition which he has consistently maintained to the introduction of the measure from its first submission to the Executive Council of the Government of India in 1881 has only been confirmed and strengthened by the later developments of the discussion.

2. Before referring to the grounds upon which this opposition, in which Mr. Rivers Thompson regrets to find himself at variance with His Excellency the Governor-General in Council, is based, I am directed to notice some points in the Bill which demand consideration. If the Bill, as it has been circulated for opinion, is passed—(1) all Native sessions judges and magistrates of districts will, by virtue of their office, be empowered to exercise the same jurisdiction over European British subjects as now belongs to European officials in the same positions; and (2) any Native magistrate of the first class who is a covenanted or statutory civilian, or who is an assistant commissioner in a non-regulation province, or a cantonment magistrate, may be invested, at the discretion of Government, with similar powers. Hitherto the Government has widely exercised the power of appointing as justices of the peace many Europeans, who, not being in the Government service, do not come within any of the classes above mentioned, and a great administrative convenience has been thereby secured. The withdrawal of this power, even if vested interests are saved, will, in the Lieutenant-Governor's opinion, operate to the detriment of the administration of justice, because it may very well happen that in many places, such as the minor seaports, out-of-the-way sub-divisions, and, occasionally, at railway stations, the services of an honorary (European) magistrate would secure all that was requisite, when neither

covenanted nor statutory civilians were available for the duty. This omission of course might be easily remedied ; but if it is remedied by the reservation of such powers in the hands of Government, as now obtain, it is obvious that one principle upon which the Bill is based will be compromised, and the limitation of the grant of such judicial powers to European British subjects alone could not be defended. As the Lieutenant-Governor understands, however, the Government of India is not prepared to go to the extent of conferring such powers upon Natives generally.

3. Again, in the matter of cantonments, the observations of His Excellency the Commander-in-Chief, speaking with the authority of Government in the debate of the 9th March last, seem to show that there was no intention of conferring the office of a cantonment magistrate upon Natives. It is not readily intelligible why, if race distinctions in judicial offices are untenable, such distinctions should be entertained in favour of the military, and not of the civil population of the country ; but assuming that the decision is final (and the Lieutenant-Governor is clearly of opinion that the decision is a right one), clause (d), section 1 of the Bill will have to be amended. But in this connexion it is necessary to direct attention to paragraph 11 of the report received from the commissioner of Orissa, where he points out that in Cuttack the joint-magistrate, or, in his absence, the magistrate of the district, exercises the judicial powers of the cantonment magistrate, and "if either of these officers should be a Native, he would, as cantonment magistrate, under the Bill exercise the jurisdiction which His Excellency appeared unwilling to concede." However, supposing the Bill to be modified as suggested, the difficulty, though involving an anomaly, might be met by the executive arrangement of never appointing a Native covenanted civilian to the magistracy or joint-magistracy of Cuttack.

4. The Bill, as it proposes to enlarge the powers of assistant commissioners in non regulation provinces, does not affect any of the districts under the Bengal administration, and the Lieutenant-Governor may leave it to others to deal with this clause. He would only remark that it very often happens that an assistant commissioner is a Native, in no respects different from the deputy magistrates of the Regulation Province, and with but a tithe of the experience which the older deputy magistrates possess in the administration of the criminal law. If the deputy magistrate is not to exercise jurisdiction over European British subjects, there is a much more forcible reason why the Native assistant commissioner should not have such a power. The case as regards the statutory civilians seems stronger still ; and the Lieutenant-Governor is constrained to refer more at length to the question as it concerns the officers appointed under 33 Vict. cap. 3, because his own judgment is here entirely in accord with that of the great majority of those who have commented upon and condemned the proposal. The system under which Natives of India are thus admitted to the Covenanted Civil Service of the country has been in force for three or four years. Altogether, up to the present moment, six gentlemen have obtained appointments to the Covenanted Civil Service under the Statute, and all of them are still assistants to magistrates and collectors, and four only out of the six have passed the preliminary departmental examinations which qualify them for promotion. It may be accepted, then, as certain that it will take at least seven or eight more years before any of these officers will be in a position to enjoy the dignity of an officiating magistrate and collector of a district. The chances of advancement to a sessions judgeship are even more remote. On the ground, then, of any immediate necessity for legislation on their behalf, even if the principle of the Bill be affirmed, no cause whatever can be shown. But this is only a very small part of the question. The system itself is in an early and experimental stage of its operation ; and if it is to be continued, which the Lieutenant-Governor considers is likely to evoke discussion very soon (because any system of nomination is objectionable, and as against Europeans and Eurasians in India, one of the worst of anomalies based on purely birth and race distinctions), it has not yet justified, and probably never will justify, the conclusion that the men so selected and admitted to a great service will be competent for other than subordinate positions in it. This is the common testimony, with a few exceptions, of all the reports upon the Bill. It is quite truly represented that these nominated officers, chosen

very often more for their social connexions than for any other qualifications, have given no guarantees of ability and character which should place them in the same category as the officers who have faced the difficulties and disabilities of a voyage across the seas, and have, by open competition in England, won their place in the Civil Service. What the commissioner of the presidency division says upon this part of the subject is quite true: "The officers of the Native Civil Service come from the same classes as those from which the Uncovenanted Service is recruited. They have the same race feelings as those of their brethren of the latter service, and, save that they are not so experienced or so hard-working, there is no difference, as regards race qualification or disqualification, between a deputy magistrate and a member of the Native Civil Service under the Statute 33 Vict., cap. 3." There is no magic in the words "Covenanted Service," which should be able to transform young men, taken from the same ranks as the general run of the subordinate executive service, into superior beings fitted for posts of high responsibility. If anything is gained by a temporary sojourn of some three years in England, which is claimed for the covenanted Native civilian who enters the service by competition, the advantage is wholly wanting in the case of the statutory officers. There can be no kind of assurance that in their case they will be free from Native thoughts and Native prejudices; and ignorance of the ways and habits of Europeans is a distinct disqualification for dealing with criminal prosecutions against Europeans. The Lieutenant-Governor would ask attention to the forcible remarks made by the magistrate and collector of the 24-Pergunnahs upon this point. Mr. C. C. Stevens, the officer in question, has had 20 years' experience in many districts in Bengal. His whole career has been marked with an intelligent desire for the promotion of Native interests. He has had under him in his district work Native civilians of both classes, and his report throughout expresses that sense of regret, which every one must share with him, at having to deal with a question of such invidious delicacy for such a cause as this Bill represents. Yet, the fact is apparent, not from his report only, but from the reports of many other competent officers (and in this Native opinion seems to be almost as decided as European), that there is an essential difference between these two classes of Native civilians; and that, if the large body of uncovenanted officers are to be excluded from having jurisdiction in cases against Europeans, on the ground of unfitness, the disability extends with greater force to those of the Covenanted Service who enter it by nomination in India.

5. The Lieutenant-Governor is quite willing to recognise that the case of competition Native civilians stands on a different footing. They have made sacrifices to secure the honourable positions which they hold, and they are sacrifices of a kind which Englishmen, of all people in the world, are best able to appreciate. They have abandoned caste, they have surrendered religious feelings, they have broken family ties, and set themselves against the devout sentiments and doctrines of their ancient creeds. The sentiment may not be so strong now as it was 15 or 20 years ago; but, apart from the religious aspect of the case, the expense incurred in such an undertaking, and the risks of a long sea voyage (exaggerated in its perils to every Native mind) to a foreign country, where they must live as strangers, and encounter, in the competition for the prize they are seeking, a large body of English youth who have enjoyed the advantage of the highest training and education—all these circumstances justify a claim to consideration on the part of the Government. There is weight, too, in the argument, which finds a place in many of the papers, that with the attainment of the status of a district officer, whether he be European or Native, there should be no distinction on the ground of nationality in the powers and privileges to be exercised. As an abstract proposition the Lieutenant-Governor assents to this, and, indeed, with much which Mr. Justice Romesh Chunder Mitter advances in his Minute of the 25th May 1883, the Lieutenant-Governor would be willing to agree, if the premise could be accepted that to administrators and statesmen the policy of the measure was irrelevant and a matter of indifference. The learned judge carefully excludes himself, as a judicial officer, from all such considerations in the opening paragraph of his memorandum; but it can scarcely be conceded that we are in India simply to make our laws symmetrical and to

redress the sentimental grievances of an infinitesimal minority. They are high-sounding phrases which have appeared very frequently in the discussions upon this controverted measure, which talk of the abolition of "race distinctions" judicially, and the suppression of what one officer has called the enormous force of argument that is supposed to lie in the word "anomaly." But it appears to the Lieutenant-Governor that time at least has shown, if not the arguments of the opponents of the Bill, that the attempt to remove a single petty anomaly, which injures no one, reveals only the innumerable anomalies with which our whole position as the dominant power in India is surrounded; and that the Bill itself exposes that, so far from race disqualifications in judicial administration being abolished, this very evil becomes very greatly intensified and accentuated by the exclusion from the power, which it is proposed to assign to a few, of a large body of equally competent and meritorious public servants. The fact is that, with whatever sincerity finality may be pleaded, finality in such legislation is impossible, if once the principle is yielded; and the Lieutenant-Governor is inclined to suspect that very much of the vehemence of the agitation on both sides of the dispute arises from the knowledge that such is the case. The single question, then, is whether the time has come for the concession of the principle in any form and subject to any modifications of the Bill; and, for the reasons to be immediately given, the Lieutenant-Governor is certainly of opinion that it has not.

6. It has been put forward, not so much from any concession to popular sentiment in the matter as from the necessities of the case, that, with the abandonment of much which now appears in the Bill as regards cantonment magistrates, assistant commissioners, and statutory civilians, the power to try European British subjects should be extended only to the Covenanted Native civilians who have entered the service by competition, and that the power should be restricted to such officers as district magistrates and district judges by virtue of their office. In presence of the extreme animosities which the question has excited, this seems rather a small object to be attained, and the descent from the original proposal suggests something of the trivial results of great efforts. In the first place it may be noticed that such an issue would prospectively affect just nine individuals in India, and most of these at a distant period. Immediately, it would confer a privilege (if so it may be called) upon three Native gentlemen, two in Lower Bengal and one in Bombay—and if legislation is justifiable only where a clear case is made out for recourse to it, the condition seems hardly to be fulfilled in this instance. But the objection seems to be valid still further, because of the two Native gentlemen whom the Lieutenant-Governor has had recently the pleasure of appointing to districts, one at least will, in all probability, be relieved of his charge, in the course of next cold season, by the return from furlough of senior officers; and the Bill, by the time it became law, would affect only the one Native civilian in the Bombay Presidency, and possibly one in Bengal. It cannot be pretended, then, that there is any urgency for the legislation; nor in the constitution of the office of the magistrate and collector of a district in Bengal is there any necessity for it. It may be asserted beyond contradiction that from the beginning of the year to the end, a magistrate of a district rarely, if ever, thinks of dealing with criminal cases. He has the full power to do so; but his avocations are so numerous and his responsibilities so various in the general supervision of district administration, and in the particular charge which he retains in his own hands in connexion with revenue and fiscal matters, that he would never have the leisure to attend to work on the magisterial side, and as a consequence the whole of this falls, by a necessary division of labour, and in the regular course of procedure, to the joint-magistrate of the district and his Native subordinates in that line. Mr. Romesh Chunder Dutt is now officiating as magistrate and collector of the Backergunge district. The Lieutenant-Governor ventures to say that, with the extremely heavy revenue work of that district, he has no time, and probably has no inclination, to touch any work in the criminal courts; and if any case arose there in which a European was involved, the parties would not be put, as Mr. Romesh Chunder Dutt asserts, to "the hardship and inconvenience of travelling to a different district," but would find, in the European joint-magistrate on the spot, an

officer not only competent to deal with the case, but one who, in the ordinary course of business, would have to deal with it without the necessity of any interference from his superior. This is not always the case: there are some districts in Bengal where joint-magistrates are not permanently stationed, but in such places not unfrequently there are European officers of the Uncovenanted Service, who, as the law now stands, can exercise jurisdiction over European British subjects. The argument based on "administrative inconvenience" is utterly untenable in the present constitution of the Civil Service; and if it is untenable in Bengal, where six out of the nine Native covenanted civilians are employed, it can scarcely affect any other administration in the country. The consensus of opinion received from different provinces is very much invalidated by the fact that there is not a single member of the Native covenanted service, who has entered it by competition, in Madras, the Punjab, the Central Provinces, Burmah, Assam, Sind, or Coorg. There are two such officers in the Bombay Presidency; one, a very junior officer, under the Government of the North-western Provinces; and six in Lower Bengal. There is scarcely an exception in the support given to the irrelevancy of the "administrative inconvenience" theory among all the reports from local officers. At the present moment there are 45 districts under the Bengal Government. At the same time there are two Native civilians for whom, as magistrates in charge of districts, immediate provision has to be made; and the contingency may arise of a third being appointed in the course of next year to a civil and sessions judgeship. Executive arrangements will, it is obvious, quite easily provide, without detriment to the public interests or to the personal claims of these Native officers, either that they should be in charge of districts where there are no Europeans, or, as regards the magistrates, that they should be in charge of districts where the presence of a European joint-magistrate, or of a European deputy magistrate with full powers, would prevent any kind of inconvenience. Even if the time ever arrives when one-sixth of the magistracy of this province is in the hands of Natives—though that is quite a different thing from one-sixth of the covenanted appointments being filled by Natives, and is in itself very improbable—there could be no difficulty in carrying on the administration of criminal justice without any change in the law; but as a question of very remote concern, it is scarcely necessary to dwell upon the requirements of very distant circumstances.

7. The Lieutenant-Governor would have been glad if he could have stopped here. He is ready to admit that if everything which he has already urged against the Bill was conceded, but the competency of a Native magistrate to exercise jurisdiction in European cases was admitted, the proposal for the present modification of the Criminal Procedure Code would render the position of the advocates of the Bill not unassailable, because many political considerations would still affect the issue, but much stronger than it is now. But the question has to be met whether the legislation contemplated is justified by the fitness of the Native judiciary for the powers which it is proposed to confer upon them, and in the Lieutenant-Governor's judgment the answer must be in the negative. He comes here to that part in the discussion which, as contained in the Statement of Objects and Reasons appended to the Bill, represents the aim of it to be to secure the fair and impartial administration of justice, and to the observations of the Honourable Member who introduced the Bill that these particular cases against Europeans were in India admittedly few and exceptionally troublesome. Now, the Lieutenant-Governor has little sympathy with that section of the opponents of the measure which represents the possibility of unrighteous judgments leading to severe and unjustifiable sentences at the hands of Native magistrates, who are supposed to be a corrupt body, biassed against the European. If bias there might be in critical cases, there is little justification for any apprehensions from excessive punishments. If we have taught the Natives anything, we have taught them to respect the purity of judicial administration, and, in the Lieutenant-Governor's opinion, in these days of railways and telegraphs no wilful injustice could occur in the remotest corners of the country without being at once brought to light and remedied. Apart, however, from the main objection, which the Lieutenant-Governor will presently advert to, there are other drawbacks which must be noticed. The

surroundings of a mofussil magistrate's court are not exactly the surroundings of a court at Westminster, or of the High Court in Calcutta. An Englishman, much more an Englishwoman, summoned to such a court (frequently, as evidence shows, on a false charge) has to undergo many indignities which a European officer can at once control and check, but which, in a court presided over by a Native, find free course amidst a sympathetic audience. There is no exaggeration in this, as most persons who have had to deal with such cases can testify; and the absolute distrust which the European in the interior has of such courts arises not so much from any positive want of confidence in the magistrate, if left to himself, as from the atmosphere of perjury, forgery and intrigue which is about him and around him. Beyond this, however, the Lieutenant-Governor is bound to say that there is a much greater risk of the failure of justice from a want of nerve in the Native to deal in the presence of public excitement with the kind of "troublesome" cases to which these papers refer. The experience of every officer in the country will supply illustrations in which this independent force of character has been found wanting in the Natives, and the reports before Government show innumerable cases in which a constitutional timidity has led Natives to shirk duty because it is difficult. In judicial trials it is a much easier thing to acquit, when the acquittal terminates all inquiry and disposes of a serious embarrassment, than to convict and punish in complicated cases against the resolute determination of a violent Englishman, backed by a strong local opinion in his favour. The Lieutenant-Governor would ask if any head of an administration in India would place a Native officer in independent charge of a frontier district. A Bengali in such a position at any rate might know all our criminal codes by heart, and be animated by the strictest desire to apply the law of evidence, and yet would certainly fail if a crisis impended from any sudden irruption of frontier tribes. In the recent discussions about appellate benches, one of the earliest, and, as it appears to the Lieutenant-Governor, the simplest methods suggested for limiting petty appeals was to constitute at capital stations a bench composed of the European and first subordinate judge to finally dispose of all such cases, and yet the objection came from the most competent judges of Native character—the Natives themselves—that on such a tribunal the Native judge could exercise no independence. A good deal has recently been heard of local self-government schemes, in which the presence or absence of the magistrate of the district as president of the committee is considered a very material point; but the argument on which the Natives' objection is based is that the presence of even a single official on a committee would stop discussion, would paralyse the action of the Native members, and would imperil the object for which the scheme has been introduced. There is probably much more than this dislike of control which repudiates the co-operation of English officers in the prosecution of a great reform; but, taking their own admissions, there can, in the Lieutenant-Governor's opinion, be scarcely a stronger argument for the unfitness of Natives to carry on such a measure alone than the incapacity which they allege in the presence of the European. These may not all be exactly apposite illustrations to the position of a magistrate discharging judicial functions; but they indicate what many passages in the reports before Government describe, and what any practical experience of the country confirms, that the quality of courage, whether moral or physical, is not among the virtues of the people with whom we have to deal in Bengal. The disqualification referred to is further evidenced by the notorious fact, common to every district, that even Native litigants in emergent and difficult cases will ask for the trial of their suits by an English tribunal. It can scarcely be a matter of surprise that what is an object of distrust to the Natives themselves should be an object of distrust to Europeans.

8. The Government of India will scarcely need a more convincing proof of the unqualified repugnance which the European community throughout India entertain towards this Bill than the general reprobation of it which public opinion in various forms has expressed. The strong feelings which the measure has evoked have, it is to be regretted, found not unfrequent expression in unnecessary bitterness and hostility towards Government. The Lieutenant-Governor would fain hope that this excess of feeling in the matter will not influence the judgment which is to decide the fate of the Bill. If he urges

himself its withdrawal, it is in the conviction that it is not necessary for the judicial work of the country, and that it takes away a privilege which Englishmen in India very highly value. In asking for the retention of that privilege, they ask only for what has been theirs since British courts of criminal judicature were established in the country, and they ask it in no derogation of the claims of the Natives who, on their own side, enjoy privileges which, if the question of an impartial administration of justice is concerned, affect it much more seriously than the concession in favour of some half dozen Native magistrates. The political issues are of course of much wider consequence. "The very bad thing about the Bill is its principle"—the principle, that is, that by a stroke of the pen we are to establish equality, ignoring race distinctions, among a people who themselves repudiate the idea in their intercourse with each other with the utmost scorn and aversion. Our thoughts are not their thoughts, nor are their ways our ways; and it has been quite justly pointed out that as long as there is such a wide divergence between Englishmen and Natives, as regards moral standards, social customs, and political status, any attempt to remove judicial disqualifications must be as dangerous as it is premature. They will not be removed, at least, by legislative enactment. "*Naturam expellas furcā, tamen usque recurrēt.*" It will recur in hostility and scandals and contentions, whenever a serious case arises in which Englishmen are involved before Native courts; and the result must be continuous agitation. Be it privilege or prejudice which the Englishman asserts here, there can be no question that amongst them the bare proposal to withdraw it has excited a fiercer and more perilous conflict of races than was witnessed after the Mutiny of 1857: and so the work of 26 years, in which every true Englishman and Native has welcomed the growth of a stronger mutual regard and toleration for each other, and in which a spirit of charity and forbearance was winning its way to a better understanding of each other's wants, has to be begun over again. It is the Lieutenant-Governor's hope that the work may be accelerated by the abandonment of a measure which should never have been introduced, for its very abandonment will contribute, more than anything else, to the right union between all classes of Her Majesty's subjects in India, in advancing, through the social reforms which are before us, our common interests in this great empire.

I have, &c.

(Signed) F. B. PEACOCK,
Secretary to the Government of Bengal.

No. 16.

JUDICIAL LETTER No. 1169 of 1883, from the SECRETARY to GOVERNMENT, North-west Provinces and Oudh, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department. Dated Naini Tal, the 3rd July 1883.

SIR,

I AM directed to acknowledge receipt of your letter No. 26C, dated 17th March 1883, forwarding copies of the papers noted on the margin, and to submit, for the information of the Government of India, the opinion of the Lieutenant-Governor and Chief Commissioner on the provisions of the Bill, together with the opinions of the honourable judges of the High Court, Allahabad, and of some other persons consulted on the subject.

Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, with Statement of Objects and Reasons.

2. The Bill is intended to amend sections 22, 25, 443, 444, 450, and part of 459 of the Code of Criminal Procedure (Act X. of 1882), and its effect upon the existing law would appear to be as follows:—

- (1.) As section 22 of the Code of Criminal Procedure now stands, the Government can appoint any European British subject, official or non-official, and if official, of any branch of the Government service, to be a justice of the peace for its territories. Under the law as amended by the Bill, the primary qualification for investment with powers of a justice of the peace would no longer be one

of nationality and race descent, but would become purely official within certain branches of the public service; that is, no one could be appointed a justice of the peace who was not a magistrate of the first class, and was not—

- (a.) A member of the Covenanted Civil Service, or
- (b.) A member of the Native Civil Service, constituted under 33 Vict. cap. 3, or
- (c.) An assistant commissioner in a non-regulation province, or
- (d.) A cantonment magistrate;

and no non-official person, or member of any service under the Government other than those specified above, could be appointed a justice of the peace.

- (2.) Under section 25, as amended, all sessions judges and district magistrates would become justices of the peace for the territories administered by the local Government under which they are serving.
- (3.) It is proposed to alter section 443, so that any magistrate of the first class, who is also a justice of the peace, would be competent to try European British subjects; and the effect of this alteration, taken with the addition proposed to section 25 and with section 446, would be, that a district magistrate, whether an European or a Native, would be empowered to try European British subjects, and on conviction, to sentence them to not more than three months' imprisonment, or to fine of not more than Rs. 1,000, or to both.
- (4.) While sessions judges, whether European or Native, would become under section 25 as amended, competent to try and sentence European British subjects, assistant sessions judges, whether European or Native, would, under section 444 as amended, not be competent to do so until they had held office for three years, and had been specially empowered by the local Government.
- (5.) Section 450 and part of section 459 are proposed for repeal, because by the preceding amendments all sessions judges, whether European or Native, would, in virtue of office, be justices of the peace, and the disability of Native magistrates and sessions judges to exercise the powers of a justice of the peace would be removed.

3. The object of these amendments, as stated by the Government of India, is to settle the question of jurisdiction over European British subjects outside the presidency towns of British India in such a way as to remove at once and completely, from the Code of Criminal Procedure (Act X. of 1882) every judicial disqualification based merely upon race distinctions. The Lieutenant-Governor in submitting his views upon this proposition, desires that he may be understood to be treating the various points involved only as they relate to the North-western Provinces and Oudh. The determination of them by the Government of India may depend materially upon considerations of a general character, and upon the circumstances, political and administrative, of the different provinces of British India; and Sir Alfred Lyall would wish only to offer an opinion upon the expediency or necessity of introducing the Bill's provision into the provinces under his administration.

4. I am to say then, that the Lieutenant-Governor does not think it expedient in these provinces, to throw open to Native magistrates the jurisdiction over European British subjects to the extent that would be permissible under the Bill. The four classes of persons specified in section 1 of the Bill include, taken together, very nearly the total number of the civil officers (excluding the subordinate executive services) in these provinces. According to the constitution of the judicial service, there is in each district only a limited staff of officers at any time available for disposing of the important criminal work of the provinces. It follows that very junior officers must occasionally be invested with the powers of a first-class magistrate, their integrity and energy and the supervision of the superior courts being accepted as security for the proper exercise of these powers. The proposed magisterial qualification of eligibility for appointment to be a justice of the peace, namely, that the officer to be appointed must be a magistrate of the first class, is therefore a very variable test of special fitness to exercise that jurisdiction. It is true that the qualification is a preliminary one only, and that the Local Govern-

ment may select, from among the magistrates possessing it, those only whom it thinks fit for appointment under section 1 of the Bill. But the Lieutenant-Governor now doubts whether there is sufficient stability or security in this discretionary power; since the correspondence and discussions that have taken place regarding the Bill have elicited great diversity of opinion, and it is not impossible that the local government might, at different times, have widely different views as to the proper standard of personal fitness, and as to the various considerations unavoidably and indisputably connected in all countries with marked distinctions of race. Seeing, then, that the broader and more attractive any principle is in its abstract form, the greater is the need for prudence in its application, the Lieutenant-Governor would now advise, in this instance, that the Legislature lay down a less flexible rule than that provided in the Bill, and limit more definitely the application of a principle which, reaching very far, may easily touch feelings and prepossessions that cannot be ignored.

5. In regard, moreover, to the last of the four classes named in section 1, it is understood that any person, without restriction as to service or class, military or civil, who is invested with the powers of a magistrate of the first class within a cantonment, becomes the cantonment magistrate. If this be so, then not only for the reasons stated above, but also because cantonment magistrates are particularly intended to exercise authority over soldiers and others subject more or less to the rules and customs of military discipline, and are in constant relation with military commandants, the Lieutenant-Governor would not advise any change of law that might permit full jurisdiction in cantonments to be given to others beside European British subjects. And as both cantonment magistrates and assistant commissioners in non-regulation provinces can be appointed by the simple order of the executive Government, their status differs in this respect from that of persons appointed to the Civil Service, which is created and defined by statutes.

6. For the reasons, then, set out in the preceding paragraphs, Sir Alfred Lyall would recommend the entire omission of section 1 from the Bill.

7. Section 2 of the Bill proposes to make all sessions, judges, and district magistrates, in virtue of office, justices of the peace. With regard to this provision, I am now to explain the reasons why, after careful deliberation, the Lieutenant-Governor adheres to the opinion stated in the last paragraph of my letter No. 692, dated 27th May 1882, to the effect that the powers of justice of the peace might be conferred upon every Native officer, whether a member of the Covenanted Civil Service, or a commissioned civil officer in a non-regulation province, who may be appointed to be a magistrate of a district. In the first place, the appointment of a Native officer, except on temporary occasions, to be magistrate of a district, would, at least in these provinces, be a substantial recognition of his trustworthiness, capacity, and strength of character. For the district magistrate, who in these provinces is also the collector, is the chief executive officer holding large powers and acting under serious responsibilities within a very considerable tract of country. He commands all the executive, police, and revenue officers in the district; and he is the controller of, and to a certain extent the appellate authority over, the magisterial courts of the district. Being thus one of the main springs of the whole public administration, the district magistrate is a member of the most important grade in the whole executive service of the Government in these provinces. It was probably with advertence to this fact that one of the non-official European gentlemen consulted regarding the Bill answered that if a Native civilian was appointed magistrate and collector, it would make no appreciable difference to him whether or not that officer was a justice of the peace. Whenever, therefore, a Native civilian shall have been promoted to a position of such trust and influence, it will be both reasonable and expedient to confer upon him the full attributes of his office. For since he is responsible for keeping order within his territorial jurisdiction, and for maintaining the authority of the Government and the law, not only should he be able to deal with persons of every class and condition, but it would be inconsistent and unwise so to limit his power that he should not be able to use it against an European, even in cases of sudden emergency in which he might have to exert his authority personally in preserving the peace by punishing disorder. These reasons for giving full jurisdiction to district

magistrates are at any rate clear, and of public concern. Moreover, district magistrates are necessarily so limited in number, that the full extent to which, by including them among justices of the peace, the jurisdiction could be extended, would be plainly understood and clearly circumscribed, and would not fluctuate with changes of opinion as to the fitness of particular Native officers or classes of officers. Further, the principle of arming district magistrates with exceptional powers has been the mainstay of our executive system from a very early date. At a time when ordinary jurisdiction over European British subjects was jealously reserved to the supreme courts at the presidency towns, the Statute of 53, George III., cap. 155., empowered the district magistrate as such (whether or not a justice of the peace) to try charges against an European British subject of certain offences committed against Natives of India, and to pass sentence upon him. In fact, it is believed that investment with the powers of a justice of the peace was not essential to the exercise of the powers conferred under the statute until, for the first time, a proviso to that effect was introduced without discussion into Act XXV. of 1861. It is, perhaps, true, that up to 1832, when the Statute 3 and 4 William IV., cap. 85., was passed, no Native could have held the office of district magistrate; but the point is now mentioned to support the argument that the investment of the district magistrate as such with authority of a special kind, has, if not always, still from a very early period of our administration, been admitted as essential to local administration.

8. The Lieutenant-Governor therefore supports the proposal to amend the law so as to make all district magistrates, in virtue of office, justices of the peace. In the correspondence with which this discussion began, it was proposed by the Bengal Government to give full jurisdiction at least to Native members of the Covenanted Civil Service who shall have attained the position of district magistrate or sessions judge. And in a Minute by a majority of the High Court of these provinces it is said that to this extent an amendment of the law is not opposed by the judges, although the Minute objects altogether to clauses (b), (c), and (d) of section 1. The Lieutenant-Governor's opinion, as has been already explained, is that the appointment to a district magistracy should be taken as the necessary verification of personal fitness to exercise the special jurisdiction. And from this point of view he would not draw a distinction between members of the Covenanted Civil Service and members of the Native Civil Service constituted under Statute 33, Vict., cap. 3. It may be true, although it has yet to be proved, that the former are likely, by reason of their training in England, to be better fitted than the latter to exercise the powers of justice of the peace. But this would be one of the points to be taken into account in appointing Native civilians to be district magistrates; since, whether they were members of the Covenanted Civil Service or of the Statutory Native Civil Service, their personal fitness to exercise all the functions of the appointment would have to be considered. It may also be observed that the Statute 33, Vict., cap. 10, pledges the Government to confer appointments ordinarily reserved for the Covenanted Civil Service only upon Natives of India of proved merit and ability, under rules that may from time to time be varied; so that in the case of persons employed under this Statute the selection for higher office must always be based strictly upon fitness and efficiency.

9. The foregoing arguments in favour of the proposal to invest district magistrates, in virtue of office, with jurisdiction as justices of the peace, do not, however, in the Lieutenant-Governor's opinion, apply to the proposed investment of sessions judges, in virtue of office, with similar powers. Every offence is ordinarily triable only within the district where it occurred; and as the charge must go in the first instance before some magistrate, there are executive reasons why the district magistrate should not be debarred from receiving, and according to law disposing of, any charge of an offence cognisable within his jurisdiction. But a committal for trial before a sessions judge involves few, if any, considerations of urgency or executive expediency; while it is usually as easy to arrange for the trial being held before the judge of one district as before that of another. The object of interposing, in 1872, the jurisdiction of the sessions court between the magistrate and the High Court was to save the expense, delay, and general

disadvantages of sending Europeans from remote districts for trial to the High Court. This is a consideration which is certainly rather losing than gaining force as communications improve; and at any rate there will always be a sufficient number of European judges in different districts of these provinces to prevent serious inconvenience of this kind. Moreover, under the existing law in regard to the trial and punishment of European British subjects by the Court of Session, the judge not only possesses jurisdiction stretching over a very wide range of offences, and has power to pass a sentence that may be very severe to an European, but he can also decide whether the accused shall or shall not be sent to be tried by the High Court with a jury. In these provinces trials before sessions judges could rarely (except in the few larger stations) be held with a jury; while if procedure by jury were, as a rule, introduced for the trial of Englishmen, Native judges might be embarrassed. On the whole, therefore, the Lieutenant-Governor does not think that the anomaly of making a distinction in this respect, between European and Native judges, furnishes a sufficient reason for changing the law, in order to give Native judges the special jurisdiction over European British subjects.

10. In the final sentence of my letter No. 692, dated 27th May 1882, the specific recommendation of the Lieutenant-Governor was made in the following words:—

“In short, although the Lieutenant-Governor would not, for the present, advise that a Native covenanted civilian should be invested (save in very special cases) with the powers of a justice of the peace until he has been appointed, temporarily or permanently, to be a magistrate of a district, he would confer the powers of a justice of the peace on every Native officer, whether a member of the Covenanted Civil Service or a commissioned civil officer in a non-regulation province, who may be appointed to be a magistrate of a district.”

Sir Alfred Lyall would now amend this recommendation by striking out the clause enclosed in the parenthesis;* and he does not now advise, as was suggested in an earlier part of the confidential letter of the

27th May 1882, that a Native civilian, temporarily appointed to be a district magistrate, should retain his powers as a justice of the peace on reversion to a subordinate post. He would attach the exercise of jurisdiction as justice of the peace to the office of district magistrate, as a necessary or intrinsic function of the office itself, not of the individual who might hold it; and he would make no other substantive alteration in the law. He would retain the power, now held by the local government, of appointing, when reasons for it are shown, any European British subject, official or non-official, to be a justice of the peace. For there can be little doubt that in certain localities and circumstances it may be advisable, if not necessary, in the interests of the Natives of the country themselves that the Government should have the power of conferring upon European British magistrates, official or non-official, powers to deal promptly with their own countrymen. If, however, the Government of India are of opinion, upon a more general survey of the bearings of the question throughout India, that sessions judges ought to have jurisdiction as justices of the peace, the Lieutenant-Governor would advise that, upon the analogy of the proviso in section 4 of the Bill, the local government should be vested with discretion to confer, for special reasons, the jurisdiction upon Native sessions judges who shall have held office for a period stated. To this arrangement, indeed, for the North-western Provinces and Oudh, there would be no objection whatever; but in these provinces the sessions judges are often officers whose standing in the service is not higher than that of the district magistrates, and it becomes sometimes necessary to appoint, for short intervals, a junior officer.

11. In the correspondence submitted with this letter, it is more than once observed that the question of altering the present law regarding jurisdiction over European British subjects is in no way urgent. With this observation, so far as it relates to these provinces, the Lieutenant-Governor feels bound to say that he concurs. From one of the Minutes recorded by the judges of the High Court it appears that during the past ten years the average annual number of charges against European British subjects has been 81.

Of these cases by far the greatest number have occurred in the more important districts, in or near large stations, where European magistrates and sessions judges are always to be found, and where, for general administrative reasons, the offices of magistrate and sessions judge are not at all likely to pass out of the hands of European British officers. There are at present few European British subjects residing in the outlying districts, at a distance from the principal towns and lines of communication; nor is there any near prospect of their number increasing in parts of the country beyond easy reach and supervision from the principal centres. On the other hand, the Native civilians now in these provinces are very few. In Oudh, there is one Native assistant commissioner not belonging to the Civil Service, and two Native civilians appointed in 1880 and 1881 under the Statute 33, Vict. In the North-western Provinces, there are two officers appointed in 1880 and 1881, under that Statute, and one civilian who entered the service by competition in 1876. It may be assumed that, even if the Bill were to pass unaltered, the Government of India would expect that before the powers of a justice of the peace were conferred upon any officer of the classes made eligible, his general capacity and judgment as a magistrate of the first class would be tested by some years' probation in that class. It follows that under any circumstances not more than one or two of the gentlemen just referred to would be soon eligible as justices of the peace. And even if the proportion of Native civilians annually attached to this administration be in future augmented, the number of those who could be appointed justices of the peace must nevertheless for a long period to come be exceedingly small.

12. On the other hand, the English community in the North-western Provinces has shown, since the Bill was published, a natural desire that criminal charges against them should, as heretofore, be inquired into and tried by English judicial officers. To this arrangement no demur, so far as the Lieutenant-Governor can ascertain, is made by the Natives of these provinces at large. It is true that some leading Native gentlemen, whose views and feelings carry much weight and merit much consideration, distinctly support the principle of removing class differences and race disqualifications and would wish to see Native officers relieved from any such disability. But Sir Alfred Lyall nevertheless believes that all Native gentlemen possessing judgment, ripe experience, and real knowledge of these provinces would advise great care in selecting Native officers for the exercise of what must inevitably be, in many cases, a difficult and peculiar jurisdiction.

13. In these circumstances, the question of extending to Native magistrates the power of justice of the peace cannot be said to press upon this administration. But whenever the Government of India determine that it must be settled (and now that the question has been formally taken up it ought to be settled), the Lieutenant-Governor would certainly give the jurisdiction to all district magistrates, and he believes that this amendment of the present law would fulfil all reasonable expectations and answer all practical purposes.

I have, &c.

(Signed) J. R. REID,
Offg. Secretary to Government,
N.-W. Provinces and Oudh.

Enclosures referred to in preceding Letter.

LETTER, No. 2309, from the REGISTRAR, High Court of Judicature, North-west Provinces, to SECRETARY to GOVERNMENT, North-west Provinces and Oudh, dated Allahabad, the 8th June 1883.

SIR,

REFERRING to your No. 628, dated the 6th April last, in the Judicial (Criminal) Department, on the subject of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, I am directed to submit Minutes recorded by the Honourable the Chief Justice and Mr. Justice Oldfield, and a joint

Minute recorded by the Honourable Mr. Justice Straight, Mr. Justice Brodhurst, and Mr. Justice Tyrrel.

I have, &c.
(Signed) S. HARVEY JAMES.

MINUTE recorded by the Honourable the CHIEF JUSTICE.

THERE are many considerations germane to the question raised by this Bill, and to the legal policy relating to it, which I could have gone into with satisfaction to my own mind; but the pressure and urgency of other work has been such as to leave me without sufficient time or leisure for a full explanation of my views. I shall therefore confine myself to a few remarks on the more material points of the Bill.

I share in the regret so generally felt, and I believe with thorough and entire honesty on the part of those who have given expression to the feeling, that the Bill was introduced so hastily, unexpectedly on the part of the European community, and without any general demand on the part of the Natives of the country. Nor have I been able to discover in the discussion of the Bill in the Legislative Council, as published in the "Gazette of India," the explanation of any adequate reason for it. It was said that the proposal was to substitute for the disqualification arising from race, a qualification depending on tried personal fitness, and section 10 of the Civil Procedure Code, which provides that "no person shall, by reason of his "descent or place of birth, be in any civil proceeding exempted from the "jurisdiction of any of the courts," has been referred to as justifying the contention that the Criminal Procedure shall be brought into harmony with the Civil. But this is a view of the matter which appears to me to ignore the real and serious considerations that have to be faced. Civil law and its procedure operate, of necessity, in a manner which is indifferent to personal extraction or race, and there is nothing to colour facts and motives, and the facts being ascertained, the law takes effect civilly, without of necessity touching character, feeling, or sentiment; the property or right claimed is determined, and there is an end to the dispute, and the disappointment of the unsuccessful party is the only moral consequence that can ensue. But the administration of the criminal law in India ought to be regarded in a different light, appealing as it does to considerations relating to idiosyncrasy, temper, and temperament, moral appreciation of crime, consciousness of guilt or innocence, social degradation as the consequences of proved guilt, and the strange difference in this respect between the moral sense of the European and that of the Native. All these are very delicate considerations, and it is not easy to appreciate the opinion that they could be safely handled even by the most highly-educated Native magistrate in trying a European for an imputed offence against the criminal law.

As to Native officers of "tried personal fitness," I have some difficulty in understanding how this fitness is to be ascertained. No doubt if the Native gentlemen whom it is proposed to substitute for European have successfully gone through the training necessary for the Indian Civil Service, and have had some experience of European society, the experiment proposed might, perhaps, be made without any serious disturbance to existing social relations in this country; and I have no doubt that there are many Native gentlemen who could be safely entrusted with the performance of any duty, criminal as well as civil. I am acquainted with one Native officer in these provinces whose service and conduct during the few years he has been among us has been marked not only by fair ability, but by discretion and good sense; and after a time at least I should not fear to confide to him the trial of Europeans for offences against the penal code. This gentleman, however, although officially serving in, is not a Native of, these provinces, but is a member of the highly respectable and intelligent Parsee community, and I observe he has been lately called to the English bar.

There is, however, one peculiarity of the Native mind which ought not to be kept out of view, and that is, so far as my experience in these provinces goes, their incapacity for the investigation of facts irrespective of any con-

sideration whatever but their truth, purely and simply. Nor can they weigh evidence; in fact, they seem to me utterly incapable of understanding what evidence is; and as I remarked lately in a civil suit (first appeal No. 143 of 1880, dated 4th July 1881), where the depositions had been shamefully taken in the subordinate Native court, the logical development of a witness's knowledge of facts is a thing utterly unknown, if it is indeed not impervious, to the Native mind. I know Native lawyers, who are not only highly respectable gentlemen, but who, in the exercise of their profession, are not only very acute in the apprehension and application of a legal principle, and indeed extremely able in legal argument generally, but yet who cannot apparently bring their minds to the consideration of disputed facts simply as such, and this of course may have a very serious bearing on the question whether Native officers could generally be relied on to faithfully administer the criminal law where a European is the accused person. As a singular instance of the bent of the Native mind to disregard, or at least to fail to apprehend, plain facts clearly standing out before them on distinct evidence, I may be allowed to refer to the celebrated "Baroda" case, where the Commissioners appointed to try the Gaekwar were equally divided, the Native Commissioners being for acquitting and the Europeans for convicting. The Native Commissioners, including so very intelligent a person as Sir Dinkar Rao, were all men of the highest rank, and were content to offer a general opinion in favour of the Gaekwar, without the least attempt to support their view of the case by any examination of the evidence; while the European Commissioners, all men of high distinction and experience in public affairs, with Sir Richard Couch, the late Chief Justice of Bengal, at their head, went fully into the merits of the case as spoken to by the witnesses, and showed the guilt of the accused by an irresistible demonstration of facts. The Government of India, however, under these circumstances, refrained from recording any opinion of its own on the evidence and proceedings before the Commission, but by proclamation announced a conclusion which was only intelligible on a belief of the Gaekwar's guilt and a knowledge of his gross misconduct for a series of years, and declared his deposition from the sovereignty of the Baroda State, and that he and his issue were precluded from all rights, honours, and privileges thereto pertaining. Indeed it is impossible to understand the view taken of the Gaekwar's conduct by the Native Commissioners, except on the idea that the Gaekwar's rank, status, and position were such as to be incapable of being affected by the depositions of the witnesses who were examined, many of whom being persons by whose statements Natives of rank are not accustomed to be influenced. It might have been different if, instead of such witnesses, persons in a social position nearer to that of the Native Commissioners themselves had given evidence to the same effect; and this just shows the danger of confiding to Native officers the decision of questions touching the liberty and reputation of Englishmen and other Europeans, and which depend on the appreciation of evidence of facts, irrespective of the status of the witnesses who speak to them. The one thing is to secure the exclusion of bias and feeling, and that a trial should be in all respects *fair*.

To revert to the Bill under consideration, I would advise that Native officers to be appointed under it should be selected from class (a) in section 1; and it occurs, that in important cases in which the punishment might exceed 12 months, a Native magistrate should not be allowed to proceed with any preliminary inquiry with a view to commitment, or to the trial of a European without notice to the High Court, in the form of an application by the prosecutor, to show cause why the inquiry should not go on before the Native magistrate, whose warrant, however, should in the first instance be sufficient for the safe custody or bail of the accused European. Such a proceeding as this, along with the remedy afforded by section 456, Act X. of 1882, might meet every possible miscarriage of the law, and afford every reasonable protection to Europeans who stand accused before Native magistrates.

If the Bill is allowed to pass I hope the change it makes in criminal procedure will be carried out with the greatest possible caution, and every care taken in the appointment of Native officers under it, to select the men

who may be presumed to be the best fitted for the performance of such new duties.

The 7th June 1883.

(Signed) R. STUART.

MINUTE recorded by the Honourable Mr. Justice OLDFIELD.

THE remarks I have to offer must be considered to be confined to the Bill so far as it affects the North-western Provinces, and I am bound to say that I can find no immediate necessity for its introduction into these provinces, either on the ground that there has been a demand on the part of the Native community for a measure to empower Natives of this country as justices of the peace and magistrates to deal with offences committed by European British subjects, or because the staff of magistrates who may be empowered under the law as it stands to deal with such offences is inadequate for the purpose.

I fully appreciate the desirability of removing, so far as possible, invidious race distinctions; but I think the introduction of the Bill at the present time is to be regretted, seeing that there was no urgent need for it, and in view of the strong opposition to which it has given rise, an opposition which is undoubtedly based, however erroneously, on an honest conviction of its injurious tendency.

At the same time I am decidedly of opinion that the opponents of the Bill have greatly exaggerated the mischievous consequences likely to arise from the Bill, and I am persuaded that the Bill may safely be passed in a modified form without any evil result. I would recommend that jurisdiction over European British subjects should not be given to Native magistrates of the classes (b) and (c) in section 1 of the Bill, and that Native magistrates should not be employed as cantonment magistrates, and I would confine the jurisdiction over European British subjects to Native members of the Covenanted Civil Service only.

I think a measure of this sort, particularly under existing circumstances, cannot be introduced with too great caution, and it will be best to confine the exercise of powers under it, in the first instance, to Natives who are members of the Covenanted Civil Service, and who, by their education, residence in England, and intercourse with Europeans, may confidently be expected to exercise their powers fairly and satisfactorily.

The 5th June 1883.

(Signed) R. C. OLDFIELD.

MINUTE recorded by the Honourable Mr. Justice STRAIGHT, Mr. Justice BRODHURST, and Mr. Justice TYRRELL.

WE are invited by Government to give expression to our opinions upon the provisions of the "Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects." As a preliminary observation, and speaking with reference to these provinces alone, it seems to us matter for regret that we were not asked at an earlier stage, and before the measure was introduced into the Council, as to whether any pressing necessity existed in this part of India for any such change in the law as that which is now proposed. Had any inquiries been addressed to us, we could have shown what we now have to point out, that there are no circumstances, either of administrative or judicial inconvenience existing within the jurisdiction of this court necessitating legislation. At the present moment there is only one Native covenanted civilian in the North-west to whom clause (a) of section 1 of the Bill applies, and he is a joint-magistrate of the 2nd grade; and with regard to clause (b) of section 1, we have only two young Native gentlemen, nominated under 33 Vict., cap. 3., acting as assistant magistrates. As to clause (d) there is not a single Native cantonment magistrate in the provinces, nor we do think it would be at all desirable that any Native should be appointed to such a post. Then as to the number of European British subjects coming before the criminal courts, we find that during the last 10 years 817 in all have been tried by

the sessions judges, district magistrates, and magistrates of the first class, and that in 12 districts out of 37, namely, Azamgarh, Hamirpur, Lalitpur, Jalaun, Etah, Mainpuri, Pilibhít, Budaun, Bijnor, Taráí, Garhwál, and Bulandshahr, there has not been a single case. Towards the total we have mentioned, the Allahabad district contributes 235, Agra 100, Cawnpore 75, Meerut 40, including the military stations of these several towns, and many of the offences comprehended relating to breaches of cantonment rules and regulations; while Dehra Dûn gives 121, Saháranpur 43, and Mirzapur 43. We are unaware that any unusual difficulty or inconvenience ever arose in connexion with the disposal of this annual average of 81 cases against European British subjects; no complaint of anything of the kind is on record; and, as far as we can see, there is no probability of its occurring.

It will thus be seen that in these provinces no reasons of public convenience called for the introduction of this Bill, nor was there any personal grievance crying for redress, and the anomaly upon which so much stress has been laid in justification of the measure had never obtruded itself in any way. The existence of English courts in India is in itself an anomaly; but we doubt if anyone could be found bold enough to propose their extinction merely upon that ground, and if absolute uniformity is to be the guiding principle of legislation in this country, we should at once abolish the distinction that protects a Native gentleman of rank, or a *pardah-nashin* woman, from appearing in court, when a European male or female can claim no such exemption.

We have said this much, because in a matter that has provoked such a display of strong feeling, a great deal of which, by the way, appears to us exceedingly exaggerated and undignified, we think we are bound to adopt the somewhat unusual course of expressing, in no uncertain terms, our views as to the inexpediency of, and absence of necessity for the introduction of this Bill, at any rate as far as these provinces are concerned. We have not been able to ascertain that there was any demand or any agitation for such a change in the law, except of course on the part of the one gentleman who seems to have made the first move in the matter, until it was suggested by the appearance of the Bill itself; and we most emphatically say that there was not, and is not, any pressing need or necessity for it. Whatever another 20 years may effect, by an increase in the numbers of Native gentlemen qualifying for the covenanted or nominated to the Indian Civil Service, the alteration now proposed might well have been left to the future for settlement, when a substantial grievance clamoured for removal. We cannot of course venture to speak with reference to the circumstances of Lower Bengal and the Presidencies of Madras and Bombay, which will no doubt be fully dealt with by the Minutes of the several High Courts interested, for there are many matters relating to Lower Bengal, for example, of which in these provinces we can have no direct knowledge or experience. In passing, however, we think it right to say that we have no sympathy whatever with much of the language that has been used in the course of the bitter controversy that this Bill has aroused with regard to Native magisterial officers; and we think it is scarcely calculated to serve the cause of its opponents, with those who wish to give the question a calm and impartial consideration. Seeing that under the law the Native magistrates are entrusted with the power of trying their fellow-countrymen for many offences, it is neither complimentary nor creditable to our system of criminal justice to speak of them in a manner that implies they are intellectually and morally unfit to exercise any such jurisdiction at all. At the same time, from our experience, we feel bound to remark that, while the Native subordinate judges and munsifs of these provinces, with few exceptions, exhibit a peculiar taste for, and facility in, dealing with the questions of law which are raised in civil suits, we cannot say, save in some rare instances, that we have found such of the work of our Native magistrates, as has passed under our notice, to be equally happily done. There is no disguising the fact that many of the latter especially do not appreciate or understand the rules of evidence, and that they do not value the importance of recording depositions with strict care and accuracy. In justice to our Native magistrates, however, it should be observed that their duties are of a mixed kind, and that much of their time has to be devoted to revenue work as deputy collectors—a class of

business in no way calculated to improve their knowledge of criminal law or practice. Without unreasonably depreciating them, we cannot say that we think these gentlemen, either by training, experience, or knowledge of the manners and habits of Europeans, fitted to hold inquiry into or trial of cases in which European British subjects are in the position of accused persons. In this way, and to this extent only, can we coincide in the remarks that have been made upon the subject to which we have been more immediately referring.

So much has been said and written about the Bill now before us, that were we to discuss the various arguments for and against it, we should only be recapitulating what has already been urged on one side or the other. In the angry and impassioned war of words that the introduction of this measure has precipitated, it is not altogether easy to preserve that calmness and impartiality which is so essential in dealing with a question of this kind upon its true merits. We have already indicated in plain terms our opinion that the Bill is not wanted; but on the assumption that it may be persevered with, we have given its provisions our best attention, and think it right at once clearly and in distinct terms to state that we object altogether to the proposals contained in clauses (b), (c), and (d) of section 1 of the Bill. We think, however, without going the length of asserting that Native gentlemen who have passed into the Covenanted Civil Service, and who have reached the position of sessions judge or magistrate of a district, to be "more English" in thought and feeling than Englishmen themselves," as described by an exuberant supporter of the measure during the debate in Council, that they may fairly be said, from the incidents of their training, experience, and necessary length of service, to have given pledges of their capacity and competency to exercise jurisdiction over European British subjects. To this extent, and this extent only, we do not oppose an amendment of the law. But, while going so far, we wish most emphatically to declare that if this concession is granted, it should only be made with the plain and positive intimation that it is in no way to be regarded as a precedent or basis for future agitation in the direction of the other proposals contained in the Bill.

The 2nd May 1883

(Signed)

D. STRAIGHT,
M. BRODHURST,
W. TYRRELL, } Judges.

LETTER No. 990 from the JUDICIAL COMMISSIONER, Oudh, to SECRETARY to GOVERNMENT, North-west Provinces and Oudh, dated Lucknow, the 8th May 1883.

SIR,

I HAVE the honour to acknowledge the receipt of your letter No. 629, dated the 6th ultimo, forwarding, for my opinion, a copy of a Bill to amend the Code of Criminal Procedure as far as it relates to the exercise of jurisdiction over European British subjects.

2. Should the Bill become law, it is not likely to affect this province for some time to come. There is at present no Native gentleman holding the post of district magistrate or sessions judge, and it is improbable that His Honor would immediately appoint to be justices of the peace officers so junior as the Native gentlemen who are now serving in Oudh as assistant commissioners. It may be owing to this that the Bill has caused little excitement here.

3. I have spoken on the subject to various persons, and find that European British subjects of all classes are opposed to the Bill. Natives generally appear to take little interest in the matter in which they are not personally concerned. One gentleman has told me that he thought there was no necessity for any change in the law; another that as Natives are now for the first time being placed in charge of districts, it would be as well to wait and see how they acquit themselves as such before altering the law; a third considered the Bill premature; but as the principle of doing away with race distinctions is good, he would be glad to see it passed. Some few of the

more advanced and discontented school now see a sentimental grievance in the present law, and are in favour of the present measure. Some gentlemen have expressed regret that the Bill has been brought in, as it has given rise to an unfriendly feeling between the Native and the European. The views of the Native magistracy generally were, I believe, truly expressed by a very shrewd and practical Native judicial officer, who told me that personally he should be very sorry to be appointed a justice of the peace.

4. In my own opinion the District Magistrate should be *ex-officio* a justice of the peace. He is responsible for the peace of his district, and should have full powers. In the interests of European British subjects also, it is desirable that there should be at least one officer in every district competent to dispose at once of any complaints that may be brought against them. The remaining provisions of the Bill appear to me unnecessary, and they would, I believe, have a bad effect. Although all men may be equal in the eye of the law, there is no doubt that, as a matter of fact, Englishmen do not regard Natives as their equals; and were it not for this feeling, we should probably not be here. When considering the probable results of the proposed measure, the existence of this feeling must not be lost sight of. In the case of a timid magistrate, this assumed superiority might often lead to an improper acquittal; in the case of a vain one, it might cause undue severity. In no case would it be conducive to the dignity of our courts, or to the temperate and impartial administration of justice. I am therefore of opinion that it would be a mistake to appoint any Native officer, except the district magistrate, to be a justice of the peace.

5. It also seems to me unwise to throw away the power of appointing to be justices of the peace any European British subjects other than those specified in the first section of the Bill. The present policy of the Government is to appoint no uncovenanted European magistrate, and the race of European deputy collectors and extra assistant commissioners is gradually dying out. But a time may come when the Government will be glad to avail itself again of the services of this useful class. Looking to the possibility of a change of policy in this respect, I would retain power to appoint to be justices of the peace such European British subjects as the Government may think fit.

6. I have said that in my opinion every district magistrate should be *ex-officio* a justice of the peace; but though in theory I think there can be no doubt that he should be one, the present time does not appear to be favourable for a change in the existing law. As far as I am aware, no practical inconvenience has hitherto been experienced. I have not heard that any European British subjects have been detained for an exceptionally long period owing to there being no officer in the district competent to dispose of the complaint against them. Nor do I know of any case in which a Native complainant was prevented from prosecuting a European British subject for a similar reason. For some years to come there will be no difficulty in posting an English assistant magistrate to each of the few districts in which the district magistrate may be a Native. There is therefore no immediate necessity for any alteration in the law, and it would be inexpedient to pass a most unpopular Act until it has been shown that the present law does really occasion inconvenience.

7. The Bill has unfortunately given rise to so much angry feeling, that I trust I may be excused if I do not confine my remarks to the Bill itself, but express a hope that it may be withdrawn. My reasons for this are, that the provisions of the Bill are most obnoxious to the persons whom it will concern—the European British subjects; while they do no practical good to any other section of the community. I have heard it said that the Government is placed in this dilemma. If the Bill be withdrawn, it will look as if this were done in deference to views that have been expressed in a most unbecoming, if not in a menacing manner, and that this will be a bad precedent for all seditious agitators. On the other hand, if the Bill become law, the feelings of a small, but important and influential, body of the community will be estranged. It appears to me that there is no question as to the correct course to adopt. If, as I believe, no practical difficulties have shown an alteration in the law to be necessary, it would be a mistake to pass an Act which is regarded as an injury by the people whom it concerns, simply

that the Government may vindicate its dignity, or, in other words, show that it is not afraid. The Government of India is, I submit, too strong to shrink from doing what is right, lest it should be thought to have given way to disrespectful clamour. The Government of India might no doubt prove its power by passing the measure in spite of all opposition; but I am convinced that the more dignified—and, looking to the possible results of the measure the wiser—policy would be to withdraw the Bill in deference to the opinion of those whose interests will be affected by it, without attaching undue weight to the intemperate manner in which that opinion has been expressed.

I have, &c.

(Signed) H. J. SPARKS.

LETTER No. ²⁶~~XIII~~, from the COMMISSIONER, Meerut Division, to SECRETARY to GOVERNMENT, North-west Provinces and Oudh, dated the 7th May 1883.

SIR,

In answer to your No. 630, dated 6th ultimo, Judicial (Criminal) Department, I have the honour to state that there appears to be no object in delaying my answer to the 1st of June, the latest date allowed. Opinions held by different classes are so strong and fixed, that there is no probability of any early change taking place.

2. The mass of the Native population are ignorant of the Bill: this element is one which has to be considered only so far as can be worked on by agitators; and the religious leaders, who have most influence with them, have little or no sympathy with the Natives who are advocates of the measure.

3. These consist almost entirely of men who have been educated in our English colleges—clerks, pleaders, schoolmasters, junior officials: in short, the men who have been semi-Europeanised by an English education, are all strongly in favour of the Bill.

4. This advocacy is based partly on the ideas of liberty and equality derived from their education, and partly on the idea that the Bill places a seal on a policy of which they are strong partisans.

5. The weapon of this section of the community is the press. Its chief opponent is that part of the Native community educated according to Oriental ideas, and which infinitely prefers being governed by Europeans to being associated in Government with their fellow-countrymen, whose opinions and views they utterly distrust, and whom they consider to be perverts.

6. As yet the European, especially the European official, has held the scales between the two sections; but the semi-Europeanised section knows that with the Native press to aid him, he will have gained a vast step by anything which lowers the influence of the European.

7. Unfortunately an impression is prevalent that the Government and Executive officers are not in agreement. The origin of this is, that while Government stated the consensus of opinion is in favour of the Bill, it is very rare indeed to hear any English official approve of it.

8. The Native community educated in the Oriental method do not want the Bill; they look with the greatest jealousy and distrust on the men of the new school, and are afraid of any measure which may increase their influence. The deputy magistrates point out the fact that they always try to get a case in which an Englishman is in any way concerned tried by an English officer; and officers of experience foresee that though to be able to try Europeans may be an honour, still the evil results and inconveniences arising would far counterbalance and practically prevent the exercise of the power.

9. The unanimity among all the non-official (English) classes is wonderful in the condemnation of the Bill. Most people who have an opportunity of feeling the pulse of their countrymen must have foreseen the outcry which was certain to be raised; but probably few anticipated the stubborn, unyielding character of the opposition which would be raised. In the present state of feeling it is useless to suggest a compromise.

10. Among the officials the Bill finds no favour. So far as this part of India is concerned, it is looked on as premature. The bitterness of feeling which has been roused is deplored, while the absence of any immediate necessity for such a measure is admitted. No officer whom I have consulted suggests any modification or compromise. The feeling among the officials may, I think, be characterised as one of sincere regret and an earnest desire that the matter may be shelved as it most decently can.

I have, &c.
(Signed) ELLIOT COLVIN.

LETTER No. ¹⁰⁶_{XIII.-167.} from the COMMISSIONER, Rohilkhand Division, to SECRETARY to GOVERNMENT, North-west Provinces and Oudh, dated Bareilly, the 12th May 1883.

SIR,

IN reply to G.O. No. 631, dated 6th April, 1883, Judicial (Criminal) Department, I have the honour to remark that, although I was originally of opinion that members of the Covenanted Civil Service (irrespective of the fact as to whether they were European British subjects) and members of the Native Civil Service constituted by the rules made under 33 Victoria, cap. III., might be appointed justices of the peace, subsequent events have caused me to modify that opinion, for it is impossible to ignore the agitation which has been caused amongst the non-official English section of the community.

2. As is natural in cases when men's minds are excited, a great deal has been said on both sides which had better have been left unsaid; but the fact remains that the opposition of non-official Europeans to the proposed Bill is unanimous and intense. On the other hand, I (speaking from the opinions of Native gentlemen of standing and respectability) am convinced that there is no general wish for its introduction; and that, so far as this part of the country is concerned, they would willingly leave matters in *statu quo*, and are not in the least desirous of any such change as is contemplated by the Bill.

3. Looking at the agitation which has been caused, and at the fact that every English member of the Covenanted Civil Service is not necessarily a justice of the peace, I consider that the present Bill is uncalled for, and will, if passed, produce results which are much to be deprecated, without causing any real benefit to any one.

4. In one point only it might be advisable to make a change, *viz.*, although it is not likely to happen in these provinces for some years, the time will come when members of the Native Civil Service will be eligible for the appointment of magistrate of the district; and should such an appointment take place, administrative difficulties might arise unless the magistrate was invested with powers of a justice of the peace, for it might easily happen that there would be no other officer in the district qualified to exercise such powers. I therefore think that it might be advisable to alter the law so as to make every magistrate of the district *ex-officio* a justice of the peace; but I would go no further. I imagine that there would not be much opposition to this compromise, for as an English gentleman, a planter residing in this division, remarked to me, granted the fact that the magistrate and collector of the district was a Native civilian, it would make no appreciable difference to him whether that officer was or was not a justice of the peace.

5. In conclusion, I have given this matter my best attention, as I cannot forget that, when consulted demi-officially by you on the subject, I expressed an opinion decidedly more favourable to the proposals contained in the Bill than that which I have now given, and can only say that the strong opposition on one side, combined with entire indifference on the other which has since come to my notice, has shown me that I was mistaken.

I have, &c.
(Signed) J. C. ROBERTSON.

LETTER, No. $\frac{3150}{276}$, from the OFFICIATING COMMISSIONER, Allahabad Division, to
 SECRETARY to GOVERNMENT, North-west Provinces and Oudh, dated
 Allahabad, the 29th May 1883.

SIR,

As desired in your No. 632 of 6th April, I have consulted directly with many Europeans and Natives, and indirectly, *i.e.*, through Messrs. Barstow, Mellor, and Benson, on the subject of the Bill to amend the Criminal Procedure Code, 1882. Briefly, I may say that while all Europeans and Eurasians are against the Bill in any form or shape, few Native gentlemen other than Bengali Babus and Cashmeri Pandits desire it or think it advisable. Some no doubt, who had never previously known of the disqualification, nor in any way felt the necessity of a change, would now be averse to its being abandoned, as they look upon it as a race question, and make no secret of a desire for a victory over Europeans.

2. The latter now say but little, as they consider that all has been said that can be, and that the question will really be settled by Parliament, or at any rate in England. But that they think the less of it, or the better of themselves for having made a surrender in 1872, without which the present move would have been impossible, I do not believe. But the Europeans then recognised that grave administrative difficulties existed, that miscarriages of justice were frequent, and they gave way. They do not now believe, and speaking as magistrate for twelve years of such districts as Benares, Etawah, and Agra, I agree with them, that administrative difficulties or miscarriages of justice require any further surrender of keenly valued privileges.

3. Government is not required to, and should not, anticipate the wants of the country. And as the magistrate of Fatehpur says "all the injury (if any) which the Bill may do will fall upon the Europeans. It appears to me that it is the views of Europeans alone which require to be carefully considered and weighed, especially the views of that class, *viz.*, the non-official, whose interests are most likely to be affected. Now no one can deny that the whole body of non-official Europeans look on the Bill with consternation. Is the Government prepared to say that it is certain that the fears which the European community in general has so freely expressed are utterly groundless, and that the classes of Natives to whom the Bill proposes to give the powers of a justice of the peace are in every way fitted to exercise those powers? This is, I think, the test by which the Bill must be judged, and by it I think the Bill stands condemned. I believe every word of what the Honourable Mr. Thomas said (*Gazette of India*, 21st April, 1883) to be true; and that if Natives are given the power of summoning Europeans (and especially European women) before a Native magistrate, then they will use that power for the purpose of extortion and annoyance, and a very real terror will be added to the life of a European in the mufassil, which may at any moment lead to disastrous consequences."

4. In England no magistrate can sentence an offender to an imprisonment of longer than six months, and in doubtful cases the option of a trial by jury at sessions is nearly always given; but here the new Bill will, without affording the protection which trial by jury affords, authorise Native judges to imprison European British subjects up to twelve months. A safeguard, which the English nation has always enjoyed, is thrown aside, and Europeans can hardly be expected to acquiesce in this loss without vehement protests.

5. It may be that when local self-government has accustomed the latter to see their Native brethren taking a more prominent part in municipal and other small jurisdictions, and exercising impartially an authority to which all classes have to submit, they may accept such a Bill as is now proposed. But it is one thing to be subject to an alien in matters of taxation and municipal rights, and it is another to know that your personal liberty, and more especially that of your wives and daughters, is at their mercy. And Europeans do not believe that any Natives, with their widely different ideas in regard to almost every social and religious matter, their caste prejudice, their ignorance of the manners and customs of the Europeans, and of the motives which guide them, are competent to give them a fair trial.

6. Supporters of the Bill say :—It is to so few we propose to give this power. But is it so? Once a local Governor, who approves of the Bill, is empowered to invest assistant commissioners under the proposed Act, will he not consider himself bound to do so? Will not Native magistrates of all classes sooner or later be invested with similar powers? In common, I believe with many experienced officers, I fear that such magistrates will not prove independent, and that they will not always use their powers without fear or favour. It is, I believe, well known that Native suitors often wish to have their cases tried by an European magistrate rather than by a countryman.

7. The social and intellectual distance between Europeans and Natives in all things is so great—a distance which their religion extends rather than lessens—that few Natives acquire an intimate knowledge of the private life and habits of thought of an European.

Perhaps those who have been for some years in England, the few regular Native civilians, may be sufficiently versed in the ways of the lower, as well as of the better, class of Europeans, as to be qualified to sit as their judges; but ordinary Natives, or young men of family nominated to the Civil Service, should not in my judgment be empowered, as the Bill proposes.

8. I have said nothing of the sentiment which the Bill under discussion ignores, or of the proposed amendment of section 22 of the Criminal Procedure Code, whereby the powers of the Local Government to invest non-official European British subjects with powers over British subjects is withdrawn. I can only conclude this is an oversight.

9. So much has elsewhere been said that I have been purposely brief; but having consulted many persons, I should counsel that the proposed powers be extended only to those Native competition civilians who, as district magistrates and sessions judges, should be *ex-officio* justices of the peace.

10. The Bill can hardly be abandoned entirely, but the smaller change the better prospect there is of good government, and of the continuance of cordial relations between the Anglo-Indian and Native-born subjects of the Queen.

I have, &c.
(Signed) A. J. LAWRENCE.

LETTER FROM KUNWAR HARNAM SINGH AHLUWALIA, Lucknow, to SECRETARY to GOVERNMENT, North-west Provinces and Oudh, dated Lucknow, the 23rd April 1883.

SIR,

IN reply to your letter of the 10th instant, I beg to say that I am very thankful to Sir Alfred Lyall for inviting my opinion on the Native Jurisdiction Bill. I cannot but feel deeply interested in all that concerns the welfare of Indians; and, therefore, availing myself of this opportunity, I would premise, firstly, that by assuming the title of Empress of India, Her Majesty has extended to us the privilege of considering ourselves as fellow-subjects with Englishmen; and, secondly, by giving us a liberal education, Government has befitted us for high responsibilities, which we expect to be entrusted with to a greater extent every day, according as we are found to deserve them more and more. The policy of Government has therefore been to avail itself of the services of Natives more largely than was the case some years back, not only as a generous concession to the claims of the children of the soil, but also as rendered necessary (1) on economical, and (2) on political grounds. The Covenanted Civil Service has accordingly been thrown open to Native gentlemen, many of whom have already found admission into it; and since Government has gone thus far, every sensible man will admit that it should not long withhold from them the powers and privileges granted to their fellow-officers. A change must be made sooner or later, on the ground of administrative convenience, as also for the reasons given above. The anomalous case of a Native presidency magistrate is well known. A Native civilian is tolerated as a presidency magistrate, but has not hitherto been permitted to go to the mufassil with those powers, in the exercise of which he has afforded satisfaction to the local government as well as the public. Outside the presidency-town a Native magistrate cannot

so much as commit for trial a European. It being, however, necessary for Government, in pursuance of its declared policy, to employ Natives extensively in the judicial service, in course of time a very large number of out stations will have Native judicial officers; so the question is, how can justice be administered to all Her Majesty's subjects without Native officers possessing criminal jurisdiction over European criminals? I presume Europeans have hitherto enjoyed immunity for many a crime, owing merely to the inconvenience attending an attempt to bring them to justice. The rural and illiterate classes of Natives (who form the majority of the population of India) have therefore been accustomed to think that English law is solely intended to punish them, and not a law-breaking Englishman. They are surely mistaken, and yet Government might pay more regard to the quiet resignation of these its ignorant subjects, labouring under a mistaken sense of injustice, for which they fancy there is no remedy, than to the angry and senseless ebullitions of a privileged class who ought to know better. To me, therefore, it does not appear inexpedient to modify the existing law, and remove the disqualification which Native civilians are subject to, because of the invidious race distinction that has hitherto been allowed to exist, as also owing perhaps to the supposed unfitness of Natives to try Englishmen even in the most trivial cases of infringement of law by the latter, whom no Native is believed to be capable of thoroughly understanding and doing justice to. The distinction in law between European and Native officers, so far at least as the administration of justice is concerned, should be done away with; and this amendment should, as His Excellency is of opinion, be passed at once, rather than some years hence. As very few Natives would obtain power under it, it would be easier to watch the working of it now, than when (under the system introduced by Lord Lytton in 1879, and to which the measure proposed by Lord Ripon is but a corollary) covenanted civilians become more numerous.

Of course it is urged by those who are not in sympathy with the contemplated action of Government, that there being no sufficient safeguards against the miscarriage of justice, Natives cannot be trusted with powers over European British subjects out of the presidency-towns. Admitting this to be a fact, and granting that education, inter-communication, the supervision of High Courts, and other circumstances will not exercise any salutary restraint whatever, I would crave for consideration whether the objection does not apply with almost equal force to English civilians in out stations, and whether it has ever been allowed to be a bar to their investment with powers over Native British subjects? Taking also for granted that Natives do not understand Europeans sufficiently well to do justice to them, I ask again, do Europeans understand us so thoroughly as always to be able to do justice to us? These and other such objections that the majority of the non-official Englishmen in India are blindly raising against the wise and liberal policy of the present Government, are simply suicidal.

Englishmen claim, and that justly, that their personal law should be respected; and so they are in all civil matters. We cannot grudge them their law of marriage, of inheritance, or their trial by jury. The question merely is, *by whom shall the ordinary criminal law be administered*, as a correspondent of the "Pioneer" very well puts it? If by Natives as well as Europeans, are the former nearly as competent as the latter? I believe sufficient care is taken in the selection of officers, whether they be Englishmen or Natives, for the Covenanted Service, and the subsequent training that they receive satisfies Government as to their fitness for judicial responsibilities. The personal qualifications that ought to entitle properly-educated Natives to exercise the same powers as their fellow-officials generally, and to deal satisfactorily with cases in which Europeans are involved particularly, can be no other *tact, judgment, uniform uprightness, honesty, and moral courage*; and whether Native civilians possess them in a measure sufficient for the proper discharge of judicial duties, I believe local governments are in a better position to judge than irresponsible non-official Englishmen and Eurasians, who do not seem disposed to believe that Natives possess these virtues. As for legal and other training, I suppose Native civilians receive enough of it during the period in which they qualify

for the service in England, and say, the first five years that they exercise their judicial functions in their own country.

The proposed amendment is meeting with violent opposition from all quarters of India. Even Eurasians, and those whose European names alone seem to justify their preposterous demonstrations, have made common cause with Englishmen. But Government need not be apprehensive of anything serious resulting from this storm in a teapot. However, so far as Englishmen are concerned, the opposition presented is certainly very natural, as the proposed amendment apparently assails a privilege hitherto enjoyed by them. Yet I wish they had fought so hard on the side of reason, instead of mere sentiment. We are the more sorry for it as the amendment in question will keep up for some time the unfriendliness that it has unfortunately created between Englishmen and Natives. We shall bitterly feel it in our daily intercourse with them, but we also strongly hope that all excitement and ill-feeling, not originating in anything to perpetuate them long, will subside of themselves sooner or later, and give place to cordiality to the extent permitted by the relations in which the two races stand to each other.

It will therefore be a pity, as also a great mistake if the Bill be eventually withdrawn. It deserves to be successful over all opposition; and we fervently trust that India may yet heartily congratulate the noble ruler, and those associated with him, through whose instrumentality this great change in the administration of the country will be effected.

In conclusion, I beg you will understand that all I have said is in reference to those Natives only who return from England after successfully competing there for the Civil Service. If the Bill is passed, it will, of course, be for all Native civilians; but since Government will proceed with the greatest caution in putting it to the test of experiment, I trust that Native gentlemen of the "Indian Civil Service," if entrusted with the proposed powers at all, will be exceptionally few for some years to come.

No. 17.

LETTER from the SECRETARY to GOVERNMENT, North-western Provinces and Oudh, to SECRETARY to GOVERNMENT of INDIA, Legislative Department.—(No. 1267, dated 19th July 1883.)

IN continuation of the letter from this office, No. 1169, dated 3rd July 1883, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a letter, No. ⁵⁴¹⁵XIII, dated 7th July 1883, from Mr. J. J. F. Lumsden, Officiating Commissioner of the Banáras Division; and of a letter, No. 5124, dated 6th July 1883, from Mr. W. Lane, Officiating Commissioner of Agra, submitting their opinions on the Bill to amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects.

2. I am to remark that, as paragraph 5 of Mr. Lumsden's letter, and paragraph 11 of Mr. Smith's letter, which forms an enclosure of the letter of the Agra Commissioner, take up a point not within the scope of the Bill, namely, the fitness of Natives to become district magistrates, the Lieutenant-Governor and Chief Commissioner doubts whether these letters merit publication.

(Signed) J. R. REID.

Enclosures referred to in preceding Letter.

LETTER from the COMMISSIONER, Banáras Division, to SECRETARY to GOVERNMENT, North-western Provinces and Oudh.—(No. ⁵⁴¹⁵XIII, dated 7th July 1883.)

I HAVE the honour to reply to your No. 1090, dated 20th June 1883, requesting an expression of my opinion on the provisions of the Bill to

amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects.

2. I understand that what is wanted from me is simply a brief expression of my opinion, and not a detailed argument in support of that opinion. The subject has been so fully discussed that nothing can now be adduced in the shape of arguments, and I therefore propose to record my opinion without entering into any argumentative discussion of the grounds on which my opinion is based.

3. I am of opinion that the Bill was quite unnecessary. Its object, as set forth in the statement of objects and reasons, is to remove from "the Code, *at once and completely*, every judicial disqualification which is based *"merely on race-distinctions."* The scope of the Bill, however, is very limited, and it goes a very short way towards effacing race-distinctions. It goes far enough, however, to have excited the passionate opposition of the non-official European community, who see in it a source of present and future danger to their security and privilege in this country. There is, in my opinion, no object to be gained by subjecting Europeans to a jurisdiction which they detest in the absence of a valid political or administrative necessity for such a measure. I am distinctly of opinion that, until the present Bill was brought in, the inhabitants of these provinces took no interest in this matter, and had but the vaguest ideas of the rules under which European British subjects could be tried. Even now the mass of the population are utterly indifferent, and it is only a few noisy Bengalis and Native pleaders who profess any real anxiety to see the proposed alteration in the law carried out.

4. The points in the Bill to which I take serious exception are—

- (1.) It withdraws the power to appoint any non-official European gentleman to the office of a justice of the peace.
- (2.) It contemplates the appointment of Natives as district magistrates and justices of the peace.
- (3.) It draws no distinction between Natives who have resided for years in England and obtained admission to the Civil Service by open competition, and those Natives who have been appointed to the Civil Service by nomination in this country or who hold the appointment of assistant commissioner in non-regulation provinces.

5. If the district officer were a Native of this country, it would, no doubt, be incongruous that he should not be able to exercise powers which the law conferred on his European joint or assistant magistrates, but it appears to me that there are the strongest administrative and political reasons for not appointing a Native of the country to the post of district officer. I say this, not merely with reference to the judicial powers of the district officer as magistrate of the district, but with reference to his position as the local representative of Government in executive and administrative matters. Correspondence of a demi-official and confidential nature is frequently carried on between the local government and district officer, which could hardly be carried on with the same confidence were the latter officer a Native of this country. Apart even from times of political disquietude, occasions not unfrequently arise in which a Native district magistrate would be a direct source of weakness to our administration; for instance, the cow-killing riots of a year or two ago, and the threatened collisions which have frequently occurred between the Mussalman and Hindu population in connexion with the celebration of some of their religious festivals. Unless it is deliberately intended to surrender the country within a time which can be definitely fixed, it appears to me that the interests of the British rule in India are bound up with the maintenance of European officers as the local representatives of Government in executive and administrative matters.

6. I have nothing to say against the employment of Natives in judicial appointments, and, provided the law were altered so as to allow European British subjects to claim to be tried with a jury instead of assessors, I see no reasonable objection to conferring the powers which the Bill proposes to confer on *all sessions judges*. Beyond this, however, I would not go.

7. I claim, from my uniform conduct towards them since I entered the service, to be a true friend of the Natives of this country, and to be entirely free of all blind prejudice against them; at the same time, I must say I

sympathise with the prejudice, if prejudice it be, which makes a European clamour to be tried by one of his own race. No Government official is in a position to fully enter into the feelings of the non-official European in connexion with this subject, because the bulk of the Natives assume entirely different manners toward the latter class.

8. As far as I can gather, the non-official Europeans, here as elsewhere, are all strongly opposed to the Bill. Among the advanced Natives, no doubt many would like to see it passed, but this is by no means the unanimous opinion of even this class, while the mass of the Native community are utterly indifferent in the matter.

LETTER from the COMMISSIONER, Agra Division, to SECRETARY to GOVERNMENT,
North-western Provinces and Oudh.—(No. ⁵¹²⁴~~XV.44~~, dated 6th July 1883.)

I HAVE the honour to reply to your No. 1089 of 20th June, in the Judicial (Criminal) Department, inviting opinion on the Criminal Jurisdiction Bill, the subject of so much discussion.

2. There seems an almost universal consensus of opinion in the Agra Division adverse to the proposed changes in the law. This view is shared by official and non-official Europeans alike, and to a great extent by Natives also.

The latter acknowledge that their race has not that moral courage and independence of character needed to preside efficiently in a court where Europeans would be tried. As to the views held by Europeans, these have been so often expressed, and the inherent antipathy existing among them to be tried by a Native is so marked and thoroughly acknowledged, that the fact need not be more than alluded to.

3. Then there remains the expediency of the measure. On this point there is, again, but one opinion. Practically, there is at present no need for the change in the law.

4. Politically, the proposal has already led to the most deplorable results. The old race animosities that had slumbered for so long, and the wounds that had almost healed, have again been revived and opened out. More harm has been done by the recent agitation than any amendment in the law could possibly compensate.

5. It would be better for all parties to abandon the measure. If it must be passed, then the only course I can suggest is, as proposed by some of the officers in this division, to add a clause reserving to European British subjects the option of being tried by their own countrymen. This would be no unreasonable provision, and would tend greatly to heal the existing soreness, should it be decided to go on with the proposed legislation. I forward the replies received from the magistrates of Agra, Etah, Etawah, and Farakhábád.

LETTER from the MAGISTRATE, Agra, to COMMISSIONER, Agra Division.—
(No. 818, dated 27th June 1883.)

I HAVE the honour to reply to your reference No. ⁴⁷⁵⁴~~XV.44~~, of the 23rd instant, on the subject of Mr. Ilbert's Bill. My opinion of this measure is that it is one which sooner or later must be passed. It will be absolutely necessary when one-sixth of the Civil Service are Natives of this country, a proportion which cannot be reached in these provinces for many years to come, and which will not probably be reached in Bengal for a good many years hence. It would, however, have been well to delay the measure till administrative necessities required that it should be passed. I cannot agree with much of the reasoning which has been advanced against the Bill, more especially with such an argument as that a Native of this country is disqualified to decide criminal charges brought against an European because he is, and must be, ignorant of the motives, habits, and training of Europeans,

all of which should (it is alleged) be taken into account. This, it seems to me, is a two-edged argument, which, if rigorously applied, would prevent Europeans trying Natives of Hindustan; for our ignorance of the motives, habits, and training of 99 out of 100 Natives is a fact which cannot be denied. But, I apprehend, it is a matter of common experience that the cases in which a magistrate or judge is at a disadvantage because of ignorance of the motives, &c., of a criminal are rare. He has to judge on evidence as to facts in nine cases out of ten. Nor, in my opinion, has sufficient weight been attached to the extraordinary power of appeal given to Europeans, with which it is not intended to interfere. This is a very valuable privilege, and one which, theoretically at least, should take away much of what force there is in the contention above referred to.

2. I must admit, however, that public opinion, both Native and European, in Agra is entirely opposed to the passing of the Bill. The Native gentlemen whom I have conversed with on the subject, including Sir Dinkar Rao, Rai Muthradás, Pundit Kedarnath, and others very eminently qualified to give an opinion, oppose it on various grounds. They believe that the instances are very rare in which a Native magistrate, however honest and anxious to do right, will have the courage to do so, and they admit of their countrymen generally that, when an European is charged with any offence, a number of considerations will undoubtedly be given heed to which should find no place in a magistrate's estimate of evidence. They lay great stress on the very unfortunate outbreak of race-animosity which has followed the publication of the Bill, and which they very sincerely deprecate. They consider that the abolition of an administrative anomaly to soothe the *amour propre* of a few members of the Civil Service is most dearly bought at the expense of raising a storm of ill-will and animosity such as has not been heard of for a quarter of a century; it being a matter of indifference whether that ill-will and animosity is justly or unjustly aroused. I cordially agree with this latter contention.

3. The European opinion in Agra is, so far as I know, unanimous against the Bill, as it is believed, rightly or wrongly, that Europeans have no chance of getting justice at the hands of a Native magistrate, greatly because the magistrate cannot free himself from race-prejudices, and partly because (as I stated in the beginning of this letter) he is ignorant of European motives, habits, and training. Stress is also laid on the alleged frequency of false accusations, and that the removal of the anomaly will discourage Europeans from coming to India and thereby prevent the increase of European capital here. It is still also considered right by some that a distinction should be made between the conquered and the conquering race, and that the removal is a political blunder. I am informed that nearly every non-official European in the district has signed the petition against the Bill.

4. I apprehend, however, that the Imperial Government is committed to the passing of the Bill; and the real question now is, how to reconcile the European community to its provisions without receding from the position taken up by Government. On this point the suggestion that an option should be given to an European charged with an offence to be tried either by a Native or an European justice of the peace seems to me worthy of grave consideration. If such a clause were added to the Bill, it would maintain the principle on which Government has taken its stand, and would remove the administrative anomaly, while it would retain the privilege heretofore enjoyed by Europeans on which they lay so great store. The agitation and restlessness so prevalent now would subside, and we might hope that the discord which undoubtedly now exists will soon be forgotten.

LETTER from the MAGISTRATE, Etah, to COMMISSIONER, Agra Division.—
(No. 244, dated 27th June 1883).

I HAVE the honour to acknowledge receipt of your No. ⁴⁷⁵⁸_{XV-44}, dated 23rd instant, asking for an expression of opinion on the provisions of the Criminal

Procedure Amendment Bill, No. 8 of 1883, and in reply beg to submit the following remarks:—

2. In my opinion, the Bill in its present form is open to very grave objections. The advantages to be gained from the proposed change in the law are trifling in comparison with the manifold evils and disadvantages that would result from it. If in this country the law were a “terror to evil-doers” only, the increased jurisdiction proposed to be given to Natives would practically be of little moment; but, as is well known, false complaints in a court of justice are in this country the ordinary weapons used against an enemy. There is in Hindustani a word (*pushtdra*) which denotes “stolen or contraband property put in the house of an enemy to get him into trouble.” The fact that such a word exists in the language tells its own story. In a country like this, then, it is of vital importance to Europeans in the Mufassal that, if brought before a criminal court, they should have one of their countrymen to try them, and not a judge of another creed and race, who, however anxious to do justice, might, from his utter want of sympathy with our thoughts and feelings and his ignorance of English domestic life, be unable properly to appreciate the circumstances of the case.

Sections 451 and 460 of the existing Criminal Procedure Code give to the accused a certain discretion as to the tribunal which is to try him. Following these precedents, I would abolish that portion of the present law which provides that no magistrate not himself an European British subject shall inquire into or try a case against an European British subject; but I would at the same time give the accused, if an European British subject, a right to claim that his case should be heard before a judge of his own race.

In conclusion, I may add that all the Europeans in this district, official and non-official, with whom I have had an opportunity of discussing the matter; are strongly opposed to the Bill.

LETTER from the MAGISTRATE, Etawah, to COMMISSIONER, Agra Division.—
(No. ⁴⁹³_{XV-507}, dated 29th June 1883).

IN compliance with the request contained in your endorsement No. ⁴⁷⁵⁷_{XV-44}, dated 23rd instant, I have the honour to submit the following opinion on the provisions of the Bill to amend the Code of Criminal Procedure:—

2. The preamble starts with the words “it is expedient to amend the Code,” &c. Had it been possible to foresee the intense opposition the proposed amendment would call forth and the great excitement it would cause throughout the length and breadth of India, I feel sure the gentleman whose name is subscribed to the Bill would be among the very first to assert that it is *not expedient* to propose the amendment of the law as it stood.

3. The only reason that I can see in the Statement of Objects and Reasons attached to the Bill is that the present state of the law was “anomalous.” Now, independently of all the trouble and ill-will and excitement caused by the proposed amendment of the law, it seems to me that this was no sufficient reason for proposing the change so soon after the law as it stands had been passed. There can be no doubt that this part of the Code of 1882, which it is now proposed to amend, was passed after grave consideration and full discussion, and it seems to me to be the very worst possible policy to disturb the law passed under such circumstances so soon, and so soon to revive a question so “burning” which had been settled after such full and grave deliberation. One would naturally expect that such a troublesome matter would have remained at rest for a decade at least, or that something more than the feeling that the law so settled was anomalous, something more than the fancied sentimental grievance of one man, would be required before the work of amendment would be taken in hand.

4. So far as these provinces are concerned, I believe I am safe in asserting that the amendment is not in the least required. No case has arisen, so far as I know, or indeed is likely to arise for many years to come, in which the

slightest inconvenience has been, or will be, felt from the present law. There are sufficient justices of the peace appointed under the present law in every district to try all the cases in which European British subjects are concerned, and no case has ever come to my knowledge in which inconvenience has been felt by any of the parties to such a case from the absence of a properly constituted justice of the peace which would have been obviated if a Native magistrate had been invested with the powers of a justice of the peace.

5. The privilege is the privilege of the accused and not of the judge, but in this instance the amendment of the law is proposed in the interest of the judge or would-be judge.

6. That the privilege, anomalous though it may be, is one that is very strongly prized, this widespread agitation on the part of the European population of India generally proves clearly; and I think that some very much more cogent reason than any I can find in the Statement of Objects and Reasons should be advanced before such a highly-prized privilege is taken away. To people accustomed to the full glare of publicity which attends the proceedings of the courts of the Calcutta magistrates, where barristers are always in attendance, where members of the press are on the spot, and where the High Court can be moved at an hour's notice to redress any real grievance, the outcry that has been raised against this proposed taking away of this privilege may appear ridiculous to some extent; but the surroundings of some, indeed most, of the Mufassal magistrates' courts are far different. Much injustice, which might have the most serious results in the case of Europeans, might be done, inadvertently or otherwise, which could not be remedied by appeal to higher authority till after the lapse of a considerable time, during which much mischief might be done. It is this feeling, or something similar to this, which has caused most of the intensely excited opposition to the Bill. I cannot help feeling that there is some foundation for this opposition.

7. But besides considering the proposed change in the law as inexpedient because it is not required, and altogether inopportune, I am opposed to the Bill because I do not believe those Natives whom it is proposed to invest with these powers are generally fit to exercise them. The differences in the modes of thought and daily action between Europeans and Natives are so great, and on no point greater than in connection with their respective treatment of women, that I do not think a Native could enter into the feelings of Europeans on this and many other points, or could understand the motives which prompt Europeans, to act sufficiently well as to be able to judge them correctly. Mistakes might be made in consequence of which the results would be disastrous in the extreme.

8. I have not been brought into contact with any of the Native members of the Covenanted Civil Service, and therefore do not feel so confident in speaking of this. I have had some experience of the members of the Native Civil Service. I do not hesitate to apply what I have said in the last paragraph in this instance. And I quite confidently assert it in connexion with educated Native gentlemen generally with whom I have conversed frequently.

9. And I am equally certain that educated Native gentlemen, so far as I have had the opportunity of talking with them on the subject, are not only in my opinion unfit to be invested with powers to try Europeans, but also do not themselves wish to be invested with such powers. I asked one only yesterday. He did not acknowledge himself incompetent to try such cases, but he said there would be so much "trouble and bother" connected with it that he would much rather not have powers to try such cases. I do not think the majority of Native magistrates would have much authority, or would much overawe the usual class of Europeans who would be likely to be brought up before the courts. The result would often be unseemly wrangling and possible insult, which would have been avoided if the magistrate had been an European.

10. Indeed, so strongly do I feel on this part of the subject, that even if the proposed Bill becomes law, and I had a subordinate Native magistrate invested with the powers of a justice of the peace, I should not hesitate to exercise the power of transfer given to me as magistrate of the district unless this part of the present law also is to be changed at the same time.

11. The time may come, and however much I think it is to be regretted and deprecated, I suppose, when the magistrate of the district will be a Native. In such case, when the man must have proved his fitness unmistakeably, I think he should be invested with the powers of a justice of the peace after all precautions had been taken to insure his fitness. And so far I would allow the change in the law contained in section 2 of the Bill to be effected. I would not say that sessions judges and district magistrates are justices of the peace, but I would say that sessions judges and district magistrates when Natives shall ordinarily be invested by the local government with the powers of a justice of the peace, leaving it to the local government to decide whether this shall be the case or not.

12. In conclusion, I give in brief my reasons for objecting to the proposed change in the law. First, because no sufficient cause has been shown for it; secondly, because it is not required, and is inopportune; thirdly, because the privilege to be taken away is very highly prized, and its being taken may possibly cause injustice; fourthly, because Natives generally, and those whom it is proposed to invest with the new powers, are not competent to exercise them; and fifthly, because so far as I know, Natives generally do not wish to be invested with jurisdiction over Europeans.

LETTER from the MAGISTRATE, Farakhábád, to COMMISSIONER, Agra Division,
(No. ⁷¹¹~~XV~~, dated 3rd July 1883).

IN reply to your No. ⁴⁷⁵⁵~~XV—44~~, dated 23rd instant, I have the honour to give my views on the Bill to amend the Code of Criminal Procedure, so far as it relates to the exercise of jurisdiction over European British subjects.

2. I think that the present is a most unfavourable time for introducing such a measure. Only 11 Natives of India had, up to the end of 1880, been admitted into the Covenanted Civil Service of the three presidencies after successfully passing the competitive examinations in London. One of them after a brief career of three years, was found wanting in integrity, and was dismissed from the service, and is now in jail for contempt of the Calcutta High Court. The remaining ten are serving, six in the Lower Provinces of Bengal, two in Bombay, one in Madras, and one in these provinces. Natives being now admitted to the Civil Service without passing an examination in England, it is a fair presumption that the number of those who enter after passing the examination will be even smaller than before, and the Native civilians of the future will consequently not have such qualifications as a few years residence in England may confer, and for the purpose of the question under discussion may be assumed to be less efficient. I have no list to show whether any successful Native competitors came out to this country in 1881 and 1882, but the absence of it is immaterial, as if any have come out, they must have been studying in England before the promulgation of the new rules. Until, therefore, it is seen what effect the new rules have upon the appearance of Native candidates at the competitive examination, it will be, in my opinion, premature to make any change in the law. It is obviously useless to do so for the small number of men who have yet passed into the service, and if for the future the easier and less expensive mode of entry by nomination be preferred, it will not be worth while legislating for some years to come, until it be satisfactorily shown that the nominees are capable of exercising such powers. At present, the system has not been working long enough for a sound opinion to be formed as to their qualifications and abilities. They are few in number, therefore, few magistrates can speak of them from experience, and they have not exercised full powers long enough for a fair opinion to be given about them. I have seen some of the cases disposed of by one who was attached to this district for a few months, but who left in less than a week after my arrival, and there was certainly much room for improvement. Until we have full assurance that the nominees are, as a class, decidedly superior in ability and integrity to the deputy magistrates, they should, in my opinion, be put upon the same footing, and as it is not proposed to give deputy magistrates powers to try European-

British subjects, I consider that the nominated Native civilians should also not be empowered, at least for the present. It must be borne in mind that magisterial business is a Native officer's weak point. There are numbers of good deputy collectors in these provinces, but few good magistrates among them, and no amount of experience gives them a facility of dealing with criminal business. The quality of the work is indifferent, and it takes long to dispose of, far longer than in English magistrates' courts, and delays are dangerous in criminal cases. If the nominated Native civilians prove that they really comprehend criminal law, that they are in fact far above the ordinary run of deputy magistrates, and can approach somewhat closely to an average joint magistrate, then it will be quite time to take their case into consideration; and if the supply of Native passed candidates does not fall off, the question can be discussed upon better data than at present exist, and of a possible administrative inconvenience from the decrease in the number of European civilians. Apart from the small number of Natives who have passed the Civil Service Examination, there is, in my opinion, no sufficient reason shown for granting them power to try European British subjects. For years to come, a Native magistrate of a district will always have a joint magistrate, and unless the magistrate be a particularly conceited man, proud of his newly attained power, and anxious to exercise it (in which case there will be fear not only of an undue desire to convict, but also of an unduly heavy sentence being passed on conviction), he will also make over the trial of such cases to the joint magistrate, who as a rule, tries most of them now, and so the grant of the power to him will really be only for the sake of soothing any possible feeling of injured vanity, because the joint magistrate has more extensive jurisdiction than himself, and not for any administrative gain. And there will be probably found many Native magistrates who will be not at all anxious to try Europeans, and will be only too thankful to make over the cases to a joint magistrate. A European will, moreover, always ask for his case to be tried by an English magistrate, and unless there is some very good ground for refusing the application (which can easily exist), the Native magistrate could hardly do less than grant it. I think, therefore, the number of cases actually tried by a Native magistrate will be infinitesimally small, and consequently that the extension of the jurisdiction over Europeans to them is not called for.

4. And it is still less necessary in the case of sessions judges.

More than three-fourths of the cases will be disposed of by magistrates, and nearly the whole of the remainder, those relating to offences punishable with death or transportation for life, will be committed direct to the High Court, and of the few cases left, it must be assumed that there will be some which the sessions judge would pass on to the High Court without trial, on the ground that the offence appeared to demand a more severe sentence than he could inflict. So that the sessions judge's share of the trial of Europeans will be nominal. A return could easily be prepared showing the number of Europeans under trial since 1872, whose cases were (a) disposed of by the justices of the peace, (b) by the sessions judge, and (c) by the High Court, which would show at a glance how nominal the sessions judge's work is in this class of cases.

5. On administrative grounds I am of opinion that no change is called for: no inconvenience has arisen, and none is likely to arise for a long time to come, and I do not see any necessity to alter the law to soothe the injured feelings of one man, for so far as I am aware, the other nine have not raised the question at all.

6. I have made no mention of appeals to the Court of Session from sentences passed by justices of the peace. The appeal lies, at the option of the appellant, either to the High Court or the Court of Session, and it may be assumed that the appeal would not be preferred to the latter court when presided over by a Native.

7. The whole question of the amendment of the law appears to have arisen from Behari Lall Gupta's feeling aggrieved when he reverted from the post of officiating presidency magistrate, and could no longer try Europeans. If the Bill is passed in the modified form which has apparently found favour with many who could not support the Bill as it stands, will not this grievance be intensified, and at every reversion of a Native civilian from the post of

district magistrate to that of joint magistrate, will not the same cry be raised? The modified proposal appears to be objectionable on this ground alone.

8. Stress has been laid upon the fact that every judge of the High Court is *ex officio* a justice of the peace, whether he be a European British subject or not. True, but what deduction favourable to the Bill can be drawn from this? Has the native judge ever presided at the trial of a European? So far as I am aware, barrister judges invariably preside at the sessions. Has the native judge, sitting alone, ever heard an appeal preferred by a European?

9. No argument can be based on the fact that Native magistrates try Europeans in the presidency towns. There every case is reported for the papers; counsel can be readily engaged; the High Court is at hand, and prompt redress can be obtained for any injustice or error; the magistrates are in the habit of associating freely with Europeans. In the districts there are no reporters, rarely any barristers, the High Court is at a distance, and we have yet to learn what the magistrate's character will be.

10. In my opinion, there is no room for a compromise. The appointment of sessions judges and magistrates of districts to be *ex officio* justices of the peace appears quite unnecessary from an administrative point of view, and the appointment of Native civilians under the new rules is premature; and if the concession is once made and proves to be a mistake, it will be extremely difficult to rectify it.

The law does not require amendment, and nothing but the entire withdrawal of the Bill will, in my opinion, be satisfactory.

11. I have not entered into the advisability of subjecting Europeans to the liability to be tried criminally by Native magistrates and judges. I think it will be a grave mistake to remove their present privilege of being tried by their own countrymen; but, as for the reasons I have already given, I think the Bill both unnecessary and inopportune, I will not discuss the subject further.

No. 18.

LETTER from the SECRETARY TO GOVERNMENT, Punjab and its Dependencies, to the SECRETARY TO THE GOVERNMENT OF INDIA, Legislative Department.

No. 749, Home.
Judicial.

SIR,

Lahore, 9th July 1883.

WITH reference to your letter No. 27C., dated 17th March, I am desirous to submit the opinions on the Bill to amend the Code of Criminal Procedure, which have been received from the officers, gentlemen, and societies noted overleaf, together with a Minute on the same by His Honour the Lieutenant-Governor. I am at the same time to forward copies of the opinions which were received by the Lieutenant-Governor with reference to the proposals contained in the letter of the Government of India in the Home Department, No. 7, dated 28th April 1882, which by an inadvertence were not submitted with my confidential letter No. 703, dated 5th August 1882, to that Department.

2. The Bill and statement received with your letter under reply were published in the *Punjab Government Gazette* in English in the issues of the 22nd and 29th March and 5th April respectively, and in Urdu in the issue of the vernacular *Gazette* of the 2nd April.

3. Should any further opinions on the Bill be received before the 15th of July, they will be duly communicated.

I have, &c.
(Signed) W. M. YOUNG,
Secretary to Government, Punjab.

Enclosures referred to in preceding Letter.

MINUTE by SIR CHARLES AITCHISON, K.C.S.I., Lieutenant-Governor of the Punjab and its Dependencies, on the Bill to amend the Code of Criminal Procedure.

IN replying to the Government of India about the European Jurisdiction Bill, the opinions originally received, which should have formed enclosures of the Punjab Government letter No. 703, dated the 5th August 1882, should be forwarded, as well as those received in answer to the latter reference.

2. As was to be expected, opinions have been much influenced by the violent agitation which followed the introduction of the Bill; and the strong opposition it has evoked from the European community. These circumstances have necessarily become important factors in the question, and have removed it to a platform altogether different from that on which it was originally discussed. The race antipathies which have unfortunately been aroused have transformed a measure of administrative convenience into a burning political question, of which the withdrawal of the Bill affords no solution, and which must now be settled on its merits, on a view of the whole situation as it is, and as in its present and future bearings it affects the European and Native community alike.

3. There appear to me to be at least three conditions essential to such a settlement:—

- (1.) That the Legislature shall recognise no disqualification for office on grounds only of race, religion or colour;
- (2.) That the Legislature shall impose reasonable checks on the action of the Executive Government, and provide sufficient guarantees that judicial powers over European British subjects shall not be conferred on persons whose qualifications have not been thoroughly tested;
- (3.) That the question be settled once for all on a basis which shall, as far as can be foreseen, prevent the recurrence of lamentable controversies and dangerous agitations.

4. In the course of the last few months it has, I fear, become only too evident that the first of these conditions will be unacceptable to many of our countrymen in India. But however high race feeling may run, this question, as it seems to me, has been settled for us by the Parliament of England. In the statute passed in 1883 for the better government of India (3 and 4 William IV., Chapter 85, Section 87), it is enacted that “no Native of the said territories, nor any natural born subject of His Majesty therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office or employment under the said Company.” This statute is maintained in force by Section 64 of the Statute 21 and 22 Victoria, Chapter 106, which transferred the Government of India to the Crown; and I presume the Parliament of England would as soon think of repealing the Catholic Emancipation Act as of reimposing on the Natives of India disabilities which were abolished fifty years ago.

5. It has been urged, indeed, by high authority that, in a country where all kinds of personal laws prevail and are prized by those to whom they apply, there is no reason to single out for discontinuance a privilege to which Englishmen attach the highest importance. This is true enough as the statement of a general proposition; but, in its application to the particular question under consideration, the objection seems to me to ignore cardinal distinctions between various kinds of personal laws and privileges. So long as society exists there must of course be personal laws and privileges. These cannot be abolished without the destruction of family life, of social order, and of government itself. But there are personal laws and privileges which can be enjoyed without imposing general disabilities and incapacities upon the political status of others; and there are personal laws and privileges the fundamental idea of which necessarily involves the imposition of such incapacities and disabilities. To the one class belong, among other laws and privileges, those which have their foundation in social peculiarities; such as, for example, the exemption of Native women of rank from appearance in the

civil court, of which we have lately heard so much in connexion with the Bill; special laws of marriage; inheritance; and so forth. To the same class belong the special provisions of the law relating to the punishments that may be inflicted on Europeans in this country and their right of appeal. The abolition of privileges of this kind may become unavoidable, from change of circumstances and in the course of social and political progress. But there is a general disposition to leave them alone. Occasionally, indeed, they are even now deliberately created. To the other class belong monopolies, sectarian tests, political privileges which depend on religious or political opinion, or on race or place of birth, and the like. To laws and privileges of this kind, which cannot be enjoyed without imposing political disabilities on other sections of the community, the spirit of our laws, both in England and in India, is opposed; and the history of legislation in both countries is a history of their gradual abolition.

6. Again, an argument has been drawn against the principles of the Bill from the status of Christians in some Muhammadan and heathen countries, where they enjoy the privilege of being tried by consular tribunals. But this argument overlooks the essential reason of the thing. In the countries referred to, the laws and procedure are ordinarily interwoven with the established religion and social habits of the people; and it is the vital and ineradicable difference between those laws and ours, and not any difference of race, that necessitates a departure from the ordinary jurisdiction.* British consular courts, however, are not always presided over by European British subjects, and there is nothing to prevent a Native of India from being consul. For similar reasons we claim for Englishmen certain ex-territorial rights in the Native States of India; but this claim is occasionally relaxed when sufficient guarantees are given for the good administration of justice.

The reason for the privilege in both cases lies, not in race, but in the nature of the laws administered, the procedure followed and the punishments, sometimes barbarous, inflicted by the courts of the Native governments. The disqualification of Native judges in British India also belongs, in its origin, to a time when Natives and Europeans were under radically different laws; but now the laws and procedure are substantially the same for all, so that the essential reason of the disqualification ceases to be applicable.

7. But whatever force, greater or less, may be in these and similar objections on the score of race, the principle involved in the question has passed beyond the stage of discussion. For, as already observed, Parliament has in its wisdom decided that neither religion, nor race, nor colour, nor place of birth,† shall of itself be a disqualification for office.

No doubt, in the course of legislation in India, the Imperial law has occasionally been forgotten, and provisions inconsistent with it have been allowed a place in Indian enactments. Such inadvertences may or may not escape unchallenged; but, when once a distinct issue has been raised in respect to them, it may be questioned whether it is competent to the Indian Legislature either to import into its laws or to retain on its Statute Book a disqualification which the Parliament of England has forbidden.

The Bill under consideration fulfils this condition and recognises no such disqualification.

8. The second condition I have noted raises the whole question of personal fitness and the means by which it is to be tested. The Royal Proclamation "of 1858 declares it to be Her Majesty's will that, "so far as may be, Our Subjects, of whatever Race or Creed, be freely and impartially admitted to "Offices in Our Service, the Duties of which they may be qualified by their "Education, Ability, and Integrity duly to discharge." While the outcry for privilege in respect of race, colour and creed deserves, and will I hope receive no consideration whatsoever, it is impossible not to feel the deepest sympathy

* See Phillimore's International Law. I. 362.

† How largely the status of European British subjects depends on mere place of birth may be seen from the following illustration. A Parsee merchant has three sons, one born in Bombay, one at the Cape of Good Hope, the third in London. The family returns to Bombay, where all three are educated. The third son, and his children and children's children, born in Bombay, are European British subjects, and may be made justices of the peace. So with the second son, though he has never been in Europe. The eldest is a Native, and he and his descendants are disqualified.

with the fears and anxieties of the European community lest powers should be given to persons who are not qualified to exercise them properly. Whether those fears and anxieties are well founded or not, they are thoroughly genuine and sincere, and should command the deepest respect. European British subjects are entitled to demand from the Legislature reasonable guarantees against the evils they anticipate.

9. The objections brought against the Bill in this respect seem to me to err chiefly in confusing the question of individual fitness with the question of race. Probably even the most thorough-going supporter of the Bill would admit that Englishmen as a class are better qualified to be judges of their country men than Natives are; and that in their case individual fitness may often be assumed when in the case of the Native it would have to be thoroughly tested. Conversely, in some departments of the administration, Europeans are rightly subjected to tests from which Natives are exempt. But the objections which have been taken to the Bill go far beyond a statement of that kind. Incapacities—moral, intellectual, and social—are broadly attributed to Natives, on general grounds sometimes true, sometimes more or less plausible, occasionally entirely false; and it is inferred that all Natives fall under these disqualifications. For my own part, I take it to be not seriously disputable, and I sincerely believe that most people who consider the matter dispassionately would admit, that the gradations of individual capacity and incapacity for the exercise of the powers in question are not less complete and distinguishable among Natives than among Europeans; that there are Natives as competent to exercise judicial powers over European British subjects as any Englishman; and that the question is not to be summarily settled on the assumption of fitness or unfitness inherent in race.

10. The true, practical problem, (and it is under present circumstances one of grave and anxious concern), is how to find sufficient and satisfactory tests of individual fitness in respect of education, ability, and integrity. In the letter of the Punjab Government, No. 703, dated 5th August 1882, it was assumed that the Executive Government, which has really no interests distinct from those of its European subjects when properly understood, might be trusted, in this as in many other matters of not less importance, to discharge its functions with discretion; and that no one—whether European or Native—would ever be appointed a justice of the peace or a magistrate of the 1st class, or a sessions judge, who did not possess the requisite qualifications. Now, however, in view of the anxiety which recent discussions have evoked, it is plain that, before public confidence can be hoped for, legal checks must be imposed and statutory guarantees must be given that the persons to be invested with powers over European British subjects are duly qualified.

11. What those checks and guarantees should be, is a question on which there is room for infinite variety of opinion. As already observed, however, it is not necessary they should be the same in the case of Europeans and of Natives; and, in the case of Natives, I do not suppose that any reasonable objections can be taken to those checks and guarantees at least which are provided in Section 2 of the Bill. It would require exceptionally strong arguments and evidence to produce a rational conviction that educated Natives who have risen to the position of magistrate and sessions judge, who must therefore have exercised high judicial and administrative functions for many years, and who, by virtue of their office, have European officers and gentlemen under their orders, are unfit to be entrusted with judicial powers over European British subjects in such cases as magistrates and sessions judges are ordinarily competent to try. It seems to me that no higher or more effective guarantees for intelligence and integrity can rationally be demanded or could possibly be supplied.

12. Probably, however, it is chiefly in respect to officers of lower standing than district magistrates that real difficulty is felt; and here I do not think that the provisions of Section 1 of the Bill are satisfactory. That section introduces a purely service qualification which, whatever may be its value as a criterion of intellectual and moral fitness, operates as an exclusive test to disqualify, by a merely accidental distinction, whole classes who may be

duly qualified in all essential respects. Such an arbitrary distinction is, in my opinion, open to all the objections of race disqualification, without any of its justifications.

13. It would, I am inclined to think, be more satisfactory to adopt, with respect to persons who are not European British subjects, some practical test of fitness, such as that which is afforded by the conscientious and efficient discharge of high judicial functions for a given time. Such a principle has already been accepted in determining the qualifications necessary for sundry high judicial offices; and it might, I think, be applied with advantage in the present case. I would therefore venture to suggest that, in place of Section 1 of the Bill, a section should be substituted to provide that the Governor-General in Council and local governments may appoint to be justices of the peace such persons as they think fit, who—

- (1) being European British subjects, are invested with the powers of a magistrate of the 1st class;
- (2) being British subjects other than European British subject,
 - (a) have exercised the powers of a magistrate of the 1st Class for not less than five (or seven) years;
 - (b) are reported by the High Court of the Province to have exercised those powers satisfactorily; and
 - (c) satisfy such other conditions (including a thorough knowledge of English) as the Governor-General in Council may, from time to time, prescribe by rules made in that behalf.

14. The proposal to require the High Court to certify the judicial fitness of certain officers, before conferring on them the powers of a justice of the peace, might perhaps be considered as throwing on the High Court duties of an invidious kind. But it is in reality nothing more than the actual practice at present followed, at least in the Punjab, in conferring powers under the Criminal Procedure Code. Appointments to purely judicial offices under the Criminal Procedure Code are generally regulated by the recommendation of the Chief Court; and special powers under Sec. 30 of the Code, the powers detailed in Schedule IV., the powers of a justice of the peace, and the like, are never conferred upon any officer except on a report of the Chief Court that he is fit to exercise them.

15. As an additional guarantee and satisfaction to the European community, the jury system might, perhaps, be extended to the trial of all important cases affecting European British subjects. But there are several obvious objections to such a proposal. The question, indeed, belongs to quite a different category from the principle of the Bill, and no special remarks seem called for either in respect to it or to the other sections of the Bill, which appear to depend more or less on Sections 1 and 2.

16. Whatever be the form the Bill may finally assume, and whatever the view taken of this proposed modification or of that, I sincerely trust that the settlement arrived at will be a lasting one. If the question be decided on narrow grounds of prejudice or race disqualification, it is certain again and again to recur, each time probably with race animosities intensified. It is too much, perhaps, to hope that any settlement whatsoever can be effected without further ebullition of race antipathies. But the course which may be adopted will be satisfactory in the degree in which it may be calculated to prevent the re-awakening of such feelings in future; that is, in my opinion, in proportion as it excludes arbitrary disabilities of race, of class, or section of service, and imposes tests of individual fitness and qualification.

(Signed) C. U. Aitchison.

Lieutenant-Governor of the Punjab
and its Dependencies.

Simla, 9th June 1883.

OPINION of Mr. Justice G. R. ELSMIE, on the Bill to amend the Code of Criminal Procedure, 1882.

I HAVE little to add to the opinion given by me on the 31st May 1882, when this subject was first raised. I beg to refer to that opinion.

2. So far as the Punjab is concerned, I think I may safely say that no necessity whatever has as yet arisen for making the proposed changes in the law. We have no Native Civilian appointed by competition. We have one Native Assistant Commissioner, Muhammad Hayat Khan, C.S.I., who is not a member of the Civil Service. We have also four young officers appointed within the last two or three years, under the provisions of Chapter 3, Statute 33, Victoria. It will be a long time, presumably, before any of these officers is appointed to be a Magistrate of the District or a Sessions Judge.

3. From a Punjab standpoint, therefore, I should much prefer to wait till we see what style of work these officers turn out, and how they conduct themselves generally, before we make such an important change in the law.

4. As far as other provinces are concerned, their local officers are in a better position than I am to say whether the necessity for a change has arisen or not. I confess I still adhere to the view that all Magistrates of Districts should have equal powers. I think the prestige and authority of Magistrates of Districts should not be lowered, and if Natives are to be appointed to be Magistrates of Districts, I would not deny them the powers proposed to be granted. But this view is based on administrative grounds only, and I have no sympathy, at present, with the proposal so far as it is founded on a desire to remove so-called anomalies, or to remove disabilities from individual officers, or from a class of officers.

5. I still think that no practical inconvenience whatever is likely to be felt from withholding these powers from Native Sessions Judges.

6. On the general question of the agitation which has been caused throughout India, it is difficult to remain altogether silent, though perhaps opinions are hardly required on this point. Much of the excitement is probably due to an exaggerated idea of the practical effect of the proposed alterations. Nevertheless, the antipathy of non-official, and even of official Europeans, to such a measure, is not unnatural.

7. All persons acquainted with the administration of criminal justice in India are painfully aware how prone the more ignorant portion of the native community is to bring false charges against persons to whom they bear a grudge, and to add to true charges against guilty persons false charges against the friends and relatives of those persons. False evidence is easily procured, as we all know, and as counsel daily tell us when arguing criminal appeals. In a country where these things prevail, is it to be wondered at if the European community fears the consequences of the removal of a single safeguard? Rightly or wrongly, European Judges are more trusted by their countrymen, and even by Indians, than Native Judges.

8. Allegations, true or false, are very commonly made against the trustworthiness of Native Judges, and, in the Punjab, applications are by no means uncommon, by which the Superior Courts are moved to transfer criminal cases from Native to European Courts. I do not know that I have ever heard of an application for a converse transfer, *viz.*, from a European to a Native Court.

9. Under these circumstances, it seems natural enough that, until the European community has had fuller opportunity of judging of the qualifications of the new Native Civilians, the proposed change should be met with strong and perhaps unreasoning opposition. Such changes must probably be eventually accepted. This is the view held by an ex-Punjab official of very high standing, and of great experience, now in England; but that gentleman, in writing to me some months ago, said he regarded the measure as at present premature, as a "child born out of due time."

OPINION of Mr. Justice D. G. BARKLEY, on the Bill to amend the Code of Criminal Procedure, 1882, dated 25th April 1883.

I DOUBT the advisability of repealing the last clause of Section 22 of the Code and substituting a new clause. Under the law as it stands, non-officials, if they are European British subjects, may be appointed Justices of the Peace, and extra assistant commissioners, when European British subjects, have frequently been so appointed. The clause proposed to be substituted would render this impossible for the future, and it is not desirable, for the purpose of rendering a small number of persons who cannot now be appointed Justices of the Peace, eligible for that office, to narrow the field from which selections can at present be made. One result of this method being adopted is to extend the apparent scope of the legislation now proposed, as was shown by the discussion which took place in the Legislative Council about cantonment magistrates; and much of the excitement to which the Bill has given rise was probably due to an exaggerated notion having been formed of the extent of the changes proposed. It would probably meet all present requirements to add to the power now given by Section 22, power to appoint members of the Covenanted Civil Service, not being European British subjects, who are invested with the powers of a magistrate of the 1st class, and who are of not less than seven years' standing in the service.

It can scarcely be necessary to deal with the case of members of the Native Civil Service constituted by the rules under Statute 33 Vict. c. 3, until the Criminal Procedure Code next comes under revision, as few of this class are as yet more than probationers, and there has been little opportunity of judging of their fitness for such powers.

What I would propose, is, to go back to Section 2 of Act II. of 1869, with such additional precautions as are rendered necessary by the extended jurisdiction given to justices of the peace who are also first class magistrates by the Criminal Procedure Code of 1872, and by the jealousy which, regret it as we may, is certain to be felt for many years to come of the exercise of criminal jurisdiction over European British subjects by Natives of India, unless their qualifications and impartiality are above suspicion.

The proposed addition to Section 25 I do not think open to any reasonable objection, and had it stood alone, it would probably not have provoked any serious opposition. As the time has come when Natives of India, who are Covenanted Civilians, have attained, or are about to attain, the position of sessions judges and district magistrates, I would not advocate any compromise as to this part of the Bill. The sessions judge would try with a jury or assessors, and a European British subject could claim a mixed jury, or set of assessors under Section 451, as a European, not being a European British subject, or an American could do under Section 460, while the sentence which the sessions judge could pass would be much less in the one case than in the other.

Nothing in the remainder of the Bill calls for any comment.

It is perhaps scarcely within my province to refer to the agitation to which the Bill has given rise, but it is not at present possible to put it altogether out of sight in discussing the provisions of the Bill, and I may therefore be excused for suggesting that, as the changes proposed will chiefly affect the European community in Bengal and Assam, many of whom reside far from the head-quarters of districts, and as the speeches of the Honourable Mr. Evans and Sir Stuart Bayley in the Legislative Council show that much of the opposition to the Bill is due to a not altogether unfounded fear that, in Bengal at least, it would expose Europeans in such positions to the danger of being brought before Native magistrates on false charges, prompted by unscrupulous and wealthy enemies, the Bill should be carefully revised with a view to remove all reasonable apprehensions of this nature, and to make it clear that what is proposed is not to remove anomalies, in connexion with the criminal jurisdiction now exercised over European British subjects, many of which the Bill, as framed, will not touch, but to make such changes in the law as are either now required, or are certain to be required at no distant date, by considerations of administrative convenience, and as can be made without impairing the confidence now entertained in the administration of justice. If this were made clear, much of the present opposition to the Bill

would I believe, be disarmed. Any changes that are resolved upon should of course, be widely circulated in order to give those interested in the subject an opportunity of expressing their views, before legislation is attempted.

LETTER No. 609, from the SENIOR SECRETARY to FINANCIAL COMMISSIONER, Punjab, to the UNDER-SECRETARY to GOVERNMENT, Punjab, dated Lahore, 14th May 1883.

I AM directed to reply to your letter No. 346, dated 27th March, in which you ask for the opinion of the Financial Commissioner on the Bill to amend the Code of Criminal Procedure.

2. On the general question whether natives belonging to the Covenanted Civil Service should be empowered to exercise jurisdiction over European British subjects, as raised by Sir Ashley Eden last year, Colonel Davies has already expressed a favourable opinion in reply to the inquiry addressed to him as Commissioner of the Jullundur Division (*see* his letter No. 1088 of 22nd May 1882). His grounds for holding this opinion were pretty much the same as those put forward by the supporters of this Bill in the recent discussion in the Legislative Council. It is unnecessary for Colonel Davies to re-state these at any length. They will be found very fully and forcibly set forth in the speeches of the Honourable Mr. Quinton and the Honourable Mr. Hunter. The main ground on which the proposed change in the law is based is the *Administrative inconvenience* that will result from the continuance of the present restriction on the powers of Native Covenanted Civilians, many of whom are now arriving at the positions of Magistrates of Districts and Sessions Judges.

The question is one of practical politics; there are, so far as Colonel Davies can see, *no rights* involved in its decision, and it should be therefore decided on grounds of expediency alone.

3. As to the Bill itself, the question Colonel Davies thinks is whether it does not go beyond the necessities of the case, and, for the sake of asserting a broad principle, is not likely to cause some practical inconvenience.

In the Statement of Objects and Reasons attached to the Bill, it is explained that the Government of India has decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code *at once and completely* every judicial disqualification which is based merely on race distinctions. With reference to this, Colonel Davies would point out that this object is partly secured by taking away from local governments the power they have hitherto had, and have largely availed themselves of, of appointing the European members of the Unconvenanted Civil Service to the office of Justice of the Peace. He refers to the Extra assistant commissioners of the Punjab, and the Deputy Magistrates of the North-Western Provinces and Bengal. This was a very useful power, and it is very doubtful if, for the sake of symmetry alone, it should have been taken away. In this Province, and probably in the other Provinces named above, this change in the law will cause practical inconvenience in the future.

4. The next question is whether the Bill does not go too far in the opposite direction, and whether the object in view would not be sufficiently obtained by so amending Section 25 of the Code of Criminal Procedure as to make all Sessions Judges and District Magistrates *ex officio* Justices of the Peace. There is no doubt, Colonel Davies thinks, that so far as the administrative difficulty is concerned a change in the law to this extent would remove it completely for many years to come; and in the face of the strong opposition made by the European community in this country to the proposed changes in the law, it seems unwise to go any further than is *immediately necessary*.

5. The claim that the proposed changes will lead to the non-efficient administration of justice, is one that cannot, Colonel Davies thinks, be sustained. In the Punjab certainly, and probably throughout India, the general level of judicial ability is, and will for many years be, much higher among the European than among the Native Magistrates, and the number of the latter whom the Bill would invest with powers over European British subjects is, and must for many years to come be, very small. There are no native members of the *Covenanted Civil Service*, in this Province, and only four appointments have, as yet, been made to the Native Civil Service under the

statutory rules. In regard to these latter the objection might fairly be urged that their knowledge of the habits and mode of thinking and acting of Europeans is not so intimate as to enable them "to put themselves in the place of the accused," and thus be fully competent to judge of the probability or improbability of his having committed the offence with which he is charged.

6. For these reasons Colonel Davies is of opinion that the Bill, in aiming at symmetry, unnecessarily deprives the Government of the services of a class of men who are peculiarly fitted to try Europeans; and, on the other hand, proposes to give this power to a class who are not so well fitted for this work. On the whole, he thinks that the only change that need now be made in the law is the one he has suggested above—that which is made by Section 2 of this Bill. An alteration of the law to this extent he considers to be absolutely necessary; apart from administrative inconvenience it would, for obvious reasons, be quite intolerable if the Native Magistrate of the District or Sessions Judge were not to have powers which were possessed by men serving under his orders.

I have, &c.
(Signed) F. C. CHANNING,
Senior Secretary.

LETTER, No. 1014, from the OFFICIATING COMMISSIONER and SUPERINTENDENT, Delhi Division, to the Secretary to Government, Punjab, dated Delhi, 20th April 1883.

In reply to your No. 346, dated 27th March 1883, calling for a report on the Bill for amending the Criminal Procedure Code, I have the honour to submit the following remarks.

2. The public press has lately been so saturated with writing on the matter that I can say nothing which will not have come under your notice already, and my observations will, therefore, only have so much value as showing the impression all this agitation of the question has made on my own mind, and I think, I may assume, I belong to a very large class of Anglo-Indian officials whose great desire is that the Government may be conducted on such lines as will best promote the dignity and security of the Queen's rule in India. Believing, as I do, in the maxim that "righteousness exalteth a nation," if I considered the Bill called for in the interests of fairness and justice towards Her Majesty's native subjects, I should, I presume, regard it desirable in the true interests of the Crown to persevere, trusting that, in the long run, all sides would come round to see the desirability and honesty of the measure.

3. To the best of my judgment, however, the Bill, if it have any effect at all, will injure the European community by changing the *personnel* of the Courts having jurisdiction for the worse, instead of for the better, while conferring on the native community at large absolutely no advantage at all. I consider it will injure the European community, because the most that can be said for the native officials on whom it is proposed to confer this jurisdiction is, that it may be hoped, or anticipated, that they will display the patient fairness and love of justice with which the long growth of Christianity and British national life has animated nearly every English Judge and Magistrate. But, surely, it is not wise to risk depraving the character of a tribunal by adding to its number members who can only be hoped not to be inferior to those already comprised in it, especially when what is known of the class from which these new members are to come scarcely favours the probability of their possessing these particular excellencies. If it could be said that, owing to the scarcity of European Magistrates, unless native ones were qualified, there would be a difficulty in repressing crime by Europeans, it would be different; but if this time ever comes at all, it is not likely to be in our lifetime, and the next generation can, and will, I suppose, legislate for themselves. It is, I believe, the experience of all controlling Courts that natives themselves constantly wish their cases withdrawn from native Judges and sent to European ones, and never, so far as I know, the other way; thus showing clearly their opinion of the relative worth of the two classes of officers: especially is this the case in race matters. How seldom does a Hindu think he will get fair and unbiassed justice from a Muhammadan officer

in any point in which Hindus and Muhammadans are opposed to each other as such, and *vice versa*? While the Anglo-Bengali press has shown that the animosity against Europeans which animates the class from which, unfortunately, most Native Civilians come, is not less than that which divides Hindus and Mussulmáns. For my own part, did the Bill restrict the powers proposed to be given to Sikh or frontier Muhammadan gentlemen, I do not think the evil would be nearly so great; but it seems to me that it is to be over-sanguine to anticipate that natives of India at large, just because they have spent a few years in England, or belong to distinguished families, may be trusted to judge Europeans fairly and dispassionately as English Magistrates at least strive to do.

4. As to the claims of the Bill as removing anomalies, were it true that the passing of this Act left absolutely no difference between one class and another, it would certainly have the not inconsiderable merit of finality. But the very act leaves the European triable still only by a limited number of Courts, and those mostly with more limited powers than they possess over natives; so that the privilege of the prisoner to be tried only by special courts would remain just as before, and it would only be the privilege of the official to sit in that court which would be modified. But it seems to me public servants are employed, not out of regard to their own feelings, but for the discharge of such duties as the Government thinks they are most fitted for; and native officials, I think, may be employed more usefully by their employers than in being sent to try Foreigners. I do not think, too, we ought to lose sight of the risk of scenes occurring in Court very discreditable to us as Rulers, should European roughs be brought before native officers from the Lower Provinces.

5. Holding, therefore, as I do, that the Bill is not called for in the interests of justice, it seems to me highly unwise to persevere with it in face of the bitter opposition it has met with from the European community in all parts of India. Even assuming they are prejudiced and mistaken, their feelings are entitled to attention. *Races cannot suddenly* be made equal by legislation, and mistaken attempts to do so are certain to stir up that very race animosity and ill-will which it is most desirable, in the interests of Europeans and Natives alike, should abate and gradually die out.

I have, &c.

(Signed) J. D. TREMLETT,
Officiating Commissioner.

LETTER No. 76, from the COMMISSIONER and SUPERINTENDENT Hissár Division, to the OFFICIATING UNDER-SECRETARY to GOVERNMENT, Punjab, dated 16th April 1883.

YOUR No. 346, dated 27th March 1883, calls for my opinion on the question of the exercise of jurisdiction by Native Magistrates over European British subjects.

2. I am averse to the proposal, on the grounds stated in a recent letter to the "*Times*" by Sir Fitzjames Stephen, which are doubtless sufficiently notorious not to require recapitulation.

3. The course I should recommend is that suggested by the Anjuman-i-Punjab in its issues of the 7th, 14th, and 21st March, *viz.*, that an accused person, whether a native of the United Kingdom or of India, should have the right to claim trial by a Judge of his own country.

I have &c.

(Signed) L. J. H. GREY,
Lieut. Colonel, C.S.I.

LETTER No. 200, from the Commissioner and Superintendent, Umballa Division, to the Secretary to Government, Punjab, dated Umballa, the 14th April 1883.

I HAVE the honour to reply to your No. 346, dated 27th ultimo.

2. There can be, I think, no doubt that the great majority of the Muhammadans in Hindústán would be glad if the English left the country.

3. So also would the Sikhs as a body. Kúka-ism is a standing witness of this feeling. The hope of a Khálsa Ráj is what attracts to Kúka-ism and binds the converts together.

4. A similar feeling doubtless exists wherever in Hindústán there are strong nationalities.

5. The restless classes are distinctly disloyal all over the country. It is not that they want a larger share in managing their own affairs;—they want to get rid of us altogether.

6. To judge from the native newspapers, a large class of those who read them must be disloyal also.

7. The money-lenders and shopkeepers I believe to be loyal from self-interest.

8. So are the more intelligent of minor chiefs, who fear their stronger neighbours.

9. The facts being, to the best of my belief, as above stated, it seems to me quite wrong to ignore the further fact that we are conquerors in a conquered country—placed here by Providence for the good of that country; but none the less bound to maintain ourselves in the country till it is made clear to us that we are doing evil to the country, and not only so, but that that evil is greater than the good to the British nation at large.

10. And we can only maintain ourselves in the country, for the next 50 years at least, by acting as conquerors always have to do,—by acting as a ruling race, maintaining the prestige of the same, and keeping the executive strictly in our own hands.

11. I always deplored greatly the opening of the Covenanted Civil Service to natives, and I maintain that having made this one great mistake is not the least ground for making the second mistake of making natives Justices of the Peace, merely because it is the logical sequence of the first mistake.

12. I think there is great benefit to be derived from nominating natives to the Civil Service, or giving them commissions in the army, provided it be formally laid down and thoroughly understood that they are never to hold charge of Districts or Divisions, or to command regiments.

13. When it comes to their turn for such office, let them retire if they dislike staying, or look for promotion in the judicial line only.

14. Some few may be fitted for High Court Judges; sitting on the same Bench with English Judges, who should be in a large majority, will keep them honest; but I very much doubt for many a year to come, if any but a few exceptional natives are fit to sit alone as Sessions Judges. I am sure their fellow-countrymen will not think so.

15. If the natives prefer, as we know they do, to have their cases sent to the court of the youngest “sahib” six months out from England, to having them tried by grey-bearded native Judicial Assistants, can we suppose that the people of the country will have the same confidence in a native Sessions Judge as in an English one?

16. But to return to the more immediate question, and to look at it from a different point of view, I do not believe that there has been the slightest desire on the part of the Magistrates of the Punjab to have the powers of a Justice of the Peace. Such an idea would never enter into their heads: many of them would distinctly shrink from the responsibility of using such powers.

17. The dignity of the title, however, would have great attractions, and pressure and importunity would always be at work to extend the numbers of those selected for the honour.

18. Further, I think, that men would eventually get the power to whom it would be ~~distinctly dangerous to entrust it in outlying parts of the~~

19. Even with men of the best intentions, the feeling of caste is very strong (one sees it frequently in cases where Brahmins are concerned). It is not easy even for the educated European gentleman to hold the balance in an utterly dispassionate manner. A desire to be impartial often leads to injustice to men of one's own race.

20. If this is so, how much more difficult for the unaccustomed native, surrounded by native opinion, which is his life, or, if of a weak disposition, fearful of his European superiors, to be absolutely impartial in trying an accused who is, and whom he feels to be, however our Legislation may deny it, of a ruling as well as an alien race.

21. Holding the above views, I have no hesitation in recording my opinion against giving natives criminal jurisdiction over European British subjects.

I have, &c.
(Signed) J. W. MACNABB,
Commissioner.

LETTER No. 867, from the Commissioner and Superintendent, Jullundur Division, to the Secretary to Government, Punjab, dated Jullundur, 19th April 1883.

IN reply to your No. 346, dated 27th March, enclosing, for opinion, a copy of a Bill to amend the Code of Criminal Procedure, I have the honour to remark that had this question been put three months ago before the excitement arose on this subject, I might have been disposed to concur in the reasons given for amending the Code as logical and sufficient; and it is possible, I think, that I should not have foreseen that the grant of the powers proposed to be conferred on a very small and select number of Civil Servants at the present moment would be likely to call forth the strong feeling and animosities which have been displayed since the introduction of the Bill into Council.

2. But, in regarding the legislation proposed now, I think it is impossible to overlook what has passed, or to ignore the spirit it has evoked; nor am I prepared to say that the spirit of antagonism to the Bill has not in my opinion a certain measure of reason in it.

3. I will not attempt to repeat or to epitomise what has been said over and over again by the Press, or at meetings of indignant Englishmen, and which has often, in the heat of the moment, exceeded all legitimate bounds; but content myself with saying that I think no sufficient reason has been adduced for introducing the measure. I do not think our native fellow-subjects desired the concessions proposed, or felt they had any grievance on the score of absence of jurisdiction over European British subjects; though now that it has, so to speak, been offered them, and the vernacular press have taken up the question as a burning one, on the one hand indicating it as a wrong that the jurisdiction has not hitherto been conferred, while on the other it has been declared at indignation meetings that natives are not fit to exercise such powers,—they are no doubt beginning to desire what the non-official English community have shown themselves as greatly opposed to. This may be human nature, but it is not an argument for granting the powers proposed.

4. A very intelligent Native Judge to whom I spoke on the subject assured me that he and his confrères were very averse from having anything to do with even civil cases in which Europeans are mixed up; as, whatever decision was come to, one class or the other would always impute unworthy motives: the European, if worsted, thinking he had been dealt with unfairly because the Judge was a native; while, if the contrary were the result, the natives would certainly consider the Judge had given way to fear of European displeasure and its possible influence on his own prospects.

5. In criminal cases there will always be a double risk of this feeling affecting the mind of the Native Judge, and in most cases there will be danger of his passing inadequate sentences.

~~It is not probable that the probability of the efficiency of~~

of the peace who are European British subjects to deal with cases in which their countrymen may be involved in the criminal court.

7. In my opinion, then, though the objections which have been put forward have been overstated, and the argument that it is an anomaly that while natives of India are held competent to discharge the highest judicial functions they should not be permitted to exercise jurisdiction on the criminal side over Europeans, is difficult to meet or to deny, except by arguments founded on sentiment and race prejudices, I consider the proposed legislation to have been a mistake, and deplore that it was ever projected.

8. I do not understand that my opinion is invited on the delicate and difficult question of whether, on grounds of general policy, any modifications are desirable tending to allay the feeling of irritation which the Bill has produced; but I may perhaps be allowed to state that, in my humble judgment, the proposal I have somewhere seen, that the right might be conceded to Europeans to claim to be tried by one of their own countrymen, if they desired, is worth consideration, and would go far towards reconciling both parties in what has now become a really formidably acrimonious dispute.

I have, &c.
(Signed) G. GORDON YOUNG,
Colonel and Commissioner.

LETTER No. 1063, from the Commissioner and Superintendent, Amritsar Division, to the Secretary to Government, Punjab, dated 16th April 1883.

I HAVE the honour to reply to your No. 346, dated the 27th March.

2. When the Draft Bill was originally sent to me for an opinion, under cover of your No. 441, dated the 12th May 1882, my reply was to the effect that, looking at the matter from a *purely theoretical point of view* I saw "no reason why a native of India who, by his education and personal qualifications, had been considered a suitable person for appointment to the Covenanted Civil Service, should not be invested with all the Magisterial powers which an English member of the Covenanted Civil Service, holding a similar official position, would be invested."

3. I went on to point out that I did not think the members of the Punjab Uncovenanted Service were prepared for any alteration of the existing rule, "There are some," I added, "who, were they invested with jurisdiction over Europeans, would, with the idea of courting popularity, be unduly lenient in cases of Europeans; and there are others who might be glad of the opportunity of being harsh and severe where Europeans were concerned."

4. The latter element, which undoubtedly exists, and in some quarters where Government might perhaps least expect to find it, is the side of the question which has taken so powerful a hold on the non-official English residents in the country, in connection with the known proneness of natives to institute, or to instigate the institution of, false suits and prosecutions against persons for whom they bear ill-will or spite.

5. It may be said that the proposed change in the law would not lead to any greater facilities for the institution of false and malicious complaints against Europeans than at present. Undoubtedly it would not do so at first; but if, hereafter, the investment of Native Magistrates with jurisdiction over Europeans became at all general, natives would probably have as little hesitation in bringing, or in instigating the institution of false charges against Europeans as they at present have in bringing them against the natives of India, and the matter thus has a serious practical aspect from the non-official Englishman's point of view, and for Government, if we regard the ulterior political consequences.

6. I think it is desirable that Natives, when raised to the position of District Magistrates and Sessions Judges, should have the same power as Englishmen filling those offices; and I would therefore retain Section 2 of the Bill; but, considering the agitation which is going on and the extreme undesirableness of

much since the subject has been under public discussion, I seriously advocate the omission of the provisions contained in Section 1 from the Bill.

7. Probably this compromise would be accepted by all, and the heated feelings now prevailing would quiet down.

8. Were Section 2 to become law, the principle contended for would be asserted, and its extension hereafter, if thought desirable, would be comparatively easy; whilst the provisions of Section 2 are, in themselves, so reasonable that no great cry would be raised over them.

9. If the propriety of appointing natives of the country to the position of District Officers be admitted, it would be difficult to raise an objection to their being invested with the full powers of a Magistrate over all classes.

10. On the other hand, the provisions of Section 1 are of doubtful expediency, and, at any rate, the benefits to be gained by their becoming law are not sufficiently great to make it worth while to incur the political inconveniences arising from the present agitation and the growth of race animosity.

11. Section 1, it must be remembered, embraces a number of men who have not been out of India and who have little real knowledge of English character, and who, consequently, would be in a very bad position for estimating aright the probabilities of a case in which an Englishman is concerned. Having regard to the general character of native evidence, a Magistrate has to qualify the evidence a good deal by the probabilities of the case, if he wishes to avoid doing great injustice in some cases.

12. It is this principle that lies at the root of our jury system. If we go back to the origin of that system, we find that men were summoned from the neighbourhood of the parties, not so much to come to a judgment on the evidence formally put before them, as to bring their local knowledge to bear on the probabilities of the case.

13. This element will be wanting in Native Magistrates, especially in those who have not received an education in England. The state of morality in India is much lower than in England, and, as men judge of others by themselves, natives believe readily imputations against Europeans that we ourselves would only credit on extremely strong evidence.

14. Another point seems to me deserving of consideration. In times of political excitement, it might be inconvenient to Government to find Englishmen here and there over the country "run in" before Native Magistrates on false charges of rape, abduction, and the like. Whatever the result of the trials might be, the general native public would believe the charges to be true, and a prejudice against the ruling class would be created.

15. Our prestige and the knowledge that false charges against Europeans would be tried by English gentlemen and might lead to unpleasant results to those who brought them, keep all such cases out of Court at present; but, were the number of natives invested with jurisdiction over Europeans to become great, I am not sure that this immunity would continue.

I have, &c.

(Signed) C. A. McMAHON,
Colonel and Commissioner.

LETTER No. 1175 from the Commissioner and Superintendent, Lahore Division, to the Secretary to Government, Punjab, dated 20th April 1883.

IN acknowledging the receipt of your letter No. 346, dated 27th ultimo, forwarding, for opinion, a copy of a Bill to amend the Code of Criminal Procedure of 1882, I have the honour to state that in my opinion it is not so much the Bill as the Statement of Objects and Reasons which has given rise to the opposition to this measure, as there is but little in the Bill itself to object to.

2. In the abstract no one would object to the very reasonable proposal that Sessions Judges and District Magistrates should be *ex officio* Justices of the Peace, or even that members of the Native Civil Service should be so appointed, any more than they object to a Parsee Magistrate trying members of the Salvation Army in Bombay.

3. But the use of the term "anomalous," and the statement "that the Government of India has decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code at once and completely every judicial disqualification which is based on race distinction," was so framed as needlessly to provoke the fears of the entire European population throughout India.

4. If Mr. Ilbert had known how to gild his pill, the Bill would have been passed almost unnoticed; but in the face of the strong opposition that has been roused I think it would be wise to alter the Bill by striking out of the first section clause *b*—members of the Native Civil Service constituted by the rules under the Statute 33 Vic. Cap. 3—and amending the Statement of Objects and Reasons, so as to represent the views of the Government without wounding the susceptibilities of so influential a section of the public, if it is not now too late.

I have, &c.
(Signed) C. C. MINCHIN,
Colonel and Commissioner.

LETTER No. 1554, from the Commissioner and Superintendent, Ráwalpindi Division, to the Secretary to Government, Punjab, dated Ráwalpindi, 14th April 1883.

I HAVE the honour to reply to your No. 346, dated 27th ultimo, requesting an expression of my opinion on the proposed Bill for amending the Code of Criminal Procedure.

2. It is difficult to add any new argument to the many which have been brought forward on one or the other side regarding this measure; but I fear I must express my agreement with the opponents of it. I think that the large majority of natives do not desire it, and that, if passed, it will bring about unseemly scenes in Courts, and discreditable outbursts of wrath from the English loafer, who is the person chiefly likely in the Punjab to come before the Native Magistrates. I have seen such persons barely able to restrain their tempers even when fined, or otherwise dealt with, by an English Deputy Commissioner; and in the presence of a Native Magistrate they would certainly make no attempt to keep within bounds. I see not why we should run the risk of collision, when there is really no need to incur that risk.

3. It is unfortunately impossible to say that this is not a question of race against race. We should not have heard of it, unless a Native Member of the Viceroy's Legislative Council had stirred up the subject, and obtained a promise that it should be reconsidered. This reconsideration would not have taken place so soon as it has occurred, but for the memorandum written by a Native Civil Servant and forwarded by the late Lieutenant-Governor of Bengal. It is, and must essentially remain, a race question.

4. Another fallacy which I think needs exposure, is, that only picked men will be entrusted with powers over Englishmen and English women. I regret to demur to this proposition. The men who will be the first to receive the powers, if the Bill be passed, will be certainly those who have passed examinations, but I deny that they are truly picked men: many of them come from the lower orders of society, and are ignorant of true gentlemanly feeling, having all the disqualifications of European sycophants, and *nouveaux riches*, without the counterbalancing knowledge of English life and feeling possessed by the humblest Englishman. I should not myself object to be tried by many a native—*e.g.*, Agha Kalbiábid, lately of Amritsar, Rai Bahádár Hukm Chand, or others who could be named. Their long official experience, coupled with a high natural tone of thought, would command always respect; but to take a smart youngster from a college, and in a couple of years to make him rule over Englishmen, will simply flatter that uninstructed pride which he already suffers from, and must, I think, end in political disaster.

5. I would wish to warn Government against the exasperation which must animate our native friends, if a number of them receive these powers only to have them withdrawn, and that they will have to be so withdrawn is, to my

mind, quite certain, in no small number of instances, unless Magistrates of Districts contrive to outwit the law by keeping such "exceptionally difficult cases" as the Law Member admits them to be, in their own hands for many a year yet, till we have really succeeded in training our native fellow-subjects into a less offensive style of thinking and writing than they now affect.

I have, &c.

(Signed) H. E. PERKINS,
Commissioner.

LETTER No. 537, from the Officiating Commissioner and Superintendent, Mooltan Division, to the Secretary to Government, Punjab, dated 7th May 1883.

I HAVE the honour to reply to your No. 346, of the 27th March 1883, calling for opinion on the proposed amendment of the Criminal Procedure Code, Act X of 1882, as set forth in the Bill introduced into the Legislative Council by the Honourable Mr. Ilbert.

2. Under the Bill in question, all Native Covenanted Civilians appointed by the competitive system in England, members of the new Native Civil Service appointed under 33 Victoria cap. 3, uncovenanted District Judges who may happen to be Natives, Native Uncovenanted Assistant Commissioners, in the Non-regulation Provinces, and Native Cantonment Magistrates if any are hereafter appointed, will become eligible for appointment as Justices of the Peace.

3. The Bill, if passed into law, will also disqualify, on the other hand, all Europeans not of the Covenanted Civil Service of India, or who are not Assistant Commissioners or Cantonment Magistrates, from being eligible for the office of justice of the peace and from trying or committing for trial European British subjects.

4. The proposed Bill will no doubt remove some manifest anomalies and apparently unsymmetrical features in the present existing legislative enactment. *The question* however, arises whether the removal of the apparent anomaly is actually necessary, required by the people themselves, and desirable both in a judicial and a political point of view; and in judging of this question the rights and interests of Her Majesty's European, equally with her Native, subjects must be borne in mind.

5. Hitherto the European British subjects' privileges or quasi-privileges have been most jealously protected.

Indeed, prior to the enactment of 53 George III, criminal acts on the part of European British subjects were cognizable alone by Her Majesty's Supreme Courts established by Royal Charter at the three presidency towns of Calcutta, Madras, and Bombay.

As, however, our territories increased, such circumscribed powers were found obviously most inconvenient, if not fraught with actual injustice to the people of the country, who could not be expected for petty offences to undertake long and expensive journeys to the Presidency capitals.

Enactment 53 of George III. enabled the appointment of Justices of the Peace from among the Covenanted Civil Service of India or other British inhabitants, and from that time to the present, in practice, all members of the Covenanted Civil Service, European Military Officers in Civil employ in the newly acquired, or so termed "Non-regulation Provinces," and Uncovenanted Civil Officers, being themselves Europeans, have been generally appointed Justices of the Peace, wherever such officials have been considered necessary.

6. In addition to the above exclusion of the Native element "*pur et simple*," from the classes from which justices of the peace (save and except in the presidency towns) could be selected, the European British subject has enjoyed other and important distinctive race privileges, *e.g.*, in the Mofussil a Magistrate of the 1st class himself, a European British subject, can only sentence a European to three months imprisonment or to a fine of 1,000 rupees, while the Sessions Judge's Court can only sentence a European to a year's imprisonment and fine.

The same officials, Magistrate of the 1st class and Sessions Judge, respectively, can, on the other hand, sentence a native of India to 2 years imprisonment and fine and to transportation for life, including imprisonment for any term and fine, and may, even subject to confirmation by the High Court, sentence to the extreme penalty that the law permits.

7. The new Bill, while therefore removing an important anomaly in the shape of an unsymmetrical and "theoretically" unjust race distinction (proceeding on the generally approved and received axiom that "all men are equal before the law"), will not remove still greater anomalies, savouring far more largely of race privileges and distinctions, such as the inequality of punishments which can be meted out to the European and Native respectively, and which *prima facie* would seem to be far greater grievances to the Native community, naturally jealous of all favours or exception towards an alien and governing race.

8. We, English, are not here in India by the will or pleasure of the people of the country,—unpleasant though it may be to say so,—we virtually have acquired our territory by the sword, and hold it partly by that and partly by that prestige which the conquering race more or less must possess and retain, until the foundations of our power are sapped and destroyed either by internal treason and revolt, or by the action of a foreign power. This power and prestige necessarily carry with them certain privileges which cannot be abdicated without weakening the political, which is largely maintained by prestige and tradition rather than by actual force of arms.

9. The representatives of all conquering races have ever enjoyed some distinctive race or class privileges, as the governing power especially, where rule has been exercised over nations differing so essentially (taking them in an ethnical point of view) as regards moral character.

10. It is not strange or inconsistent, therefore, I think that the European should retain certain privileges as belonging to the governing race.

11. As a Christian people we are distasteful to both Hindu and Muhammadan, and certainly cannot in any way be said to rule by the will and affections of the people. India has ever been held by conquerors more or less, and our rule is acquiesced in as yet, because internal dissensions and want of power to combine prevents the people from turning us out; but to believe that our rule and presence among them is loved is a most absurd fallacy. We officials do not see the natives in their true guise, nor can we gauge their real feelings, as they generally appear before us with more or less interested motives, and the large amount of flattery and sycophancy that one meets with, requires to have a great deal of chaff separated from it, before the real amount of loyalty can be gauged.

12. Then, again, there is the great and all powerful factor in the matter, difference of religion, which can never be set aside in judging of a native's feeling towards us. There is the proud and unsympathetic nature of our race again which keeps us apart.

13. The fact of our belonging to the conquering race, our national peculiarities of character so diametrically opposite in every possible sense to the Oriental temperament, added to differences of religion, all combine to prevent any real love for us or genuine heart loyalty, however much lip homage we may receive.

14. Holding the above opinions strongly, and having seen and mixed a great deal with natives during some 31 years and more of varied experience throughout India, I cannot bring myself to look with unconcern on the proposed change in the Procedure Code.

15. The very great anxiety shown by the native community for this favour about to be bestowed upon them makes one all the more suspicious that the privilege is valued more to be able to gratify race jealousy and to enable the native to wipe off a long score of natural grievances, and vent their spite in lording it over the white man, rather than for the sake of an anomaly or deprivation of a "privilege," which ought not really to "benefit" the native, unless to gratify spite.

16. Then, again, it has to be considered whether the native, be he however well educated, can ever delicately and impartially administer justice towards the white man and the Christian, where his own fellow-countryman is the

complaining party? Can he estimate fairly and appreciate all his motives and make allowance for peculiar idiosyncrasies?

17. True, there is the Appellate Sessions or High Court, as the case may be, not far distant, but an immense amount of injustice in the meanwhile might be done.

An Englishman's liberty is his birthright, and it may almost be held that it is the birthright of the European to be tried by his "peers" or his fellow-countrymen and co-religionists rather than by the Hindu and Muhammadan, from whom few Englishmen out of the narrow official pale would ever confidently look for strict and impartial justice, especially in a country where perjury and false evidence reigns so uncontrolled as it does in India.

18. To enable justice to be done to an European arraigned before a Criminal Court, his character and feelings, foibles, temptations, want of acquaintance with the language or with the manners of the people, require to be understood. A mere pass examination test, secured perhaps by a system of cramming, and two or three years' residence in Europe by natives of India, who must always remain foreigners to us, actuated as they are by religious and race prejudice can hardly qualify them to judge delicate questions as to criminal intentions on the part of the white man and the Christian, especially where the native Judge's fellow-countryman is the accusing party and the *same* native Judge's fellow-countrymen, who so seldom even on oath speak the truth, the witnesses against the European.

19. There can be no doubt further that much European capital has been embarked in the country (such as tea planting, indigo factories, coffee planting, jute works, and numerous other industries) useful to both India and to England on the faith, and, almost it may be said implied promise of protection by the laws and Government of the country.

20. An Englishman has always regarded it as his birthright to be tried by his own countrymen, and this feeling has been fostered by the Legislature throughout a long series of years, stretching back almost 90 years (I go back to 33 George III. Chapter 52). During this long series of years English capital and enterprise have slowly, but surely, been poured into the country. Railways traverse the length and breadth of the land, industries tending to develop largely the resources of the country have been set a-going and brought to success. All these works have brought about or produced a large non-official European community resident in the interior of the country and often far removed from English legal assistance, or from the eyes of the Press, which an Englishman also justly regards as one of the most able guardians of his liberty and rights; to make over therefore large bodies of English settlers to the possible jurisdiction of non-Christian Judges and Magistrates being *ex officio* Justices of the Peace, as proposed by the new Bill, would be, I think, a measure almost amounting to a breach of faith, or of that guarantee for protection virtually given by our very laws themselves in consideration for which an enormous amount of European capital and industrial enterprise has been sunk in the country.

22. Anomaly although it be, I maintain politically it is expedient, nay, I may almost say, imperatively necessary, for our political interests in India, that the privilege of being tried by his fellow-countrymen and co-religionists should be retained by European British subjects, and I feel confident that if a contrary course be pursued the consequences will be disastrous, set aside alone the amount of bad feeling that this measure has provoked almost to a degree that existed in 1857.

23. I beg to submit copies of opinions of all the Deputy Commissioners in this Division, who, it will be perceived, are all strongly against the Bill, and I would commend to attention especially Mr. Gladstone's letter which puts the whole case very forcibly and temperately.

24. Having been asked for my opinion, I trust I shall be pardoned for expressing myself according to my honest heart-felt convictions.

I have, &c.

(Signed) E. P. GURDON,
Colonel and Officiating Commissioner.

LETTER No. 280, from the Deputy Commissioner, Mooltan, to the Commissioner and Superintendent, Mooltan Division, dated 17th April 1883.

IN reply to your Circular 87, dated 13th April, I have the honour to say that I am entirely opposed to the principle of the Bill for the amendment of the Criminal Procedure. The arguments for and against the Bill have been so thoroughly discussed that it is not necessary for me to give any general reason for my opinion.

2. As regards the parts of the Punjab which I know, I am convinced that there is no wish even among natives for the proposed amendment, and that the powers if conferred would be irksome to the recipients. It is in the experience of every Punjab European Officer, who distributes the daily judicial work, that numerous petitioners ask him to hear their cases himself rather than send them to a native Magistrate, and if he does not hear them himself to send them to another Sâhib.

Some of these applications doubtless arise from flattery, and some from a wish to remove the case from a local officer, such as a Tahsildâr who knows the facts of the case too well to suit the applicant. Still by far the greater number come from the greater confidence in the European; and I do not think that a Punjabi would have more confidence in the native Magistrate, because he came within any of the four classes to whom under the Bill powers can be given. I admit that European Judicial Officers often make mistakes from their ignorance of the people, still they have the confidence of the people in a manner which the native Officers have not.

I have, &c.
(Signed) E. O'BRIEN,
Deputy Commissioner.

LETTER No. 109, from the Deputy Commissioner, Jhang, to the Commissioner and Superintendent, Mooltan Division, dated 19th April 1883.

IN reply to your No. 87 of 13th instant, I would beg to state that in my opinion the benefit to be derived from a change in the law would be infinitesimal, while the evil would be very great.

The European unofficial community have shown clearly enough what they think of the change, and my sympathies have been from the first mention of the proposed change with them.

Europeans out here are a privileged race, the race which has conquered India, and to subject them in up-country stations, where Europeans are few, to native Magistrates, would, in my opinion, lower the estimation in which our race is at present held by the native population. I do not think that native Judges have the sympathy with Europeans or the knowledge of their character and motives, which would make it safe, away from the great cities, to entrust them with the power of judging them, while that native Judges should judge our ladies and women would be nothing less than a scandal.

The sole motive for the change seems to be the injured *amour propre* of Mr. Gupta, and others like him, and is certainly not sufficient to warrant a change in the law which is bitterly hated by the whole European community.

I have, &c.
(Signed) R. BARTHOLOMEW,
Major and Deputy Commissioner.

LETTER No. 253, from the Deputy Commissioner, Montgomery, to the Commissioner and Superintendent, Mooltan Division, dated 16th April 1883.

IN reply to his Circular No. 87, dated 13th instant, has the honour to give the opinion that the amendment referred to is one of the greatest mistakes the Government of India ever contemplated, indeed about the greatest it could contemplate, even were it absolutely certain the power would never be entrusted to any one not entirely fitted to exercise it, and were it also equally certain that it would never be abused by any one so entrusted with it,

still it is a great political mistake to do anything which tends to increase the want of cordiality which exists between the two races on the one hand and to decrease the moral ascendancy of the European on the other. That there is no real good feeling between the races is certain, however little it may appear to the casual observer, and no one, who sees below the surface, can be ignorant of it, and the new amendment will not only intensify this ill-will enormously, but will greatly encourage the Natives to give it expression, while it will render the European quicker to retaliate.

If Government wishes to have to reconquer the country again, it could not well find a better way to begin going about it. Government and its advisers never see the Natives as they really are. They see nothing but obsequious sycophants: civil officers seldom see them in their real colours. Let Government inquire from non-official Europeans what the native spirit really is towards Europeans and it will soon cease to believe in the cant that is talked about native loyalty. We hold the country by force and prestige, but chiefly by the latter, and unless we are ready to substitute force for prestige it is simply suicidal to decrease that prestige, yet the proposed amendment is better calculated to decrease it than anything else which could be devised. But if the outcry which the proposal has raised among the non-official European population in India does not open the eyes of the Government to the madness of the contemplated measure, no advice will be of any avail. The proverb is a true one *quem Deus*.

I have, &c.

(Signed) C. McNEILE,
Major and Deputy Commissioner.

LETTER No. 145. from the Deputy Commissioner, Muzaffargarh, to the Commissioner and Superintendent, Mooltan Division, dated 26 April 1883.

WITH reference to your Circular No. 87, dated 13th April 1883, I have the honour to reply that the only knowledge I have on the subject is that obtained by my stay in the Kangra District, from September 1881 till the end of May 1882. During that time I saw a great deal of the planters of the valley, in fact, contemplating a longer stay in the district, I made a point of learning all I could of them. My opinion is that the non-official Englishman must be accepted with all his faults, if English capital is to be induced to stay in the country, and that if Kangra is a specimen of the Punjab, it would be impracticable to act on Mr. Ilbert's Bill. Of course if English capital is not required, there would be no great objection to the planters being given to understand that they must submit or leave the country. But my opinion is that as long as the non-official Englishman is a fact that we must accept in the mofussil, the Bill is not practicable. My opinion about the non-official Englishmen in Kangra was that most of them were men who never came into a court at all, civil or criminal. There was a very small minority who were often in the civil courts, the reasons being various. In the cases of two of them I consider the reason probably was unjust treatment of the natives by Europeans, in one or two more simple ignorance of native habits which made a few planters victims to native fraud, or made them listen to the fraudulent representations of an intriguing jamadár. These plantation jamadárs were a great evil. I found that in the Kangra District when at annexation, it was declared that the people always spoke the truth, it was most common for the natives to use fraud in their dealings with Englishmen, and if they could get a hot tempered Englishman to deal with they seemed the better pleased. Some of the cases were disgraceful and showed that some of the natives stuck at nothing in their disputes with Europeans. My experience as to the Native Courts, which often had to deal with cases where the civil interests of the planters were concerned, was that the conduct of the European planters towards the Native Courts was most improper. Their conduct was bullying and overbearing, and being ignorant of law, they often offered as evidence what was not evidence at all. If it was not taken they were angry. The native Magistrates hated European cases, and very often I am afraid gave such cases in favour of the planters to appease them. My opinion was that a

European would have a much better chance of getting his suit in a Native Court than in an English one.

If criminal powers were given to Native Courts, the consequence would be disastrous. There are no European constables in Kángra District certainly to carry out orders of confinement, and though a planter would be mad to resist such an order emanating from a native, I am not sure that he might not. Of course a planter might dispute with violence the order of an English Magistrate, but I do not think it likely. Their demeanour in European Courts was always, as far as I saw, correct, and as respectful as it was disrespectful in Native Courts. I should say that as far as such a small body of men could create a mutiny, there would be a mutiny in Kángra if a native Magistrate sent a European planter to jail. This may be improper; but I think we must at present take the planters as what they are, not what we would wish them to be. There are two kinds of men whom we might expect to be endowed with powers under the Bill:—*1st*, the educated Bengali who has passed the open competition; *2nd*, the Punjab Rais. For the educated Bengali the planter has a hearty contempt as one of a nation of cowards. Moreover, the Bengali Babu, though he has a certain amount of educational knowledge, has no knowledge of English manners and customs. It is not likely that he should have, for a passed candidate for the Indian Civil Service has no opportunity of getting into society by reason of his being a passed candidate. He must have friends of his own if he wants to see society. The Bengali Babu comes out knowing something about English literature, but nothing about the manners of Englishmen. I have noticed in Kángra that a hot-headed blundering Englishman gives so very injudicious an account of his case and appears so vindictive that at first sight one is inclined to be prejudiced against him.

Sir Walter Scott's Scotch Advocate declared that he often felt inclined to kick his clients down stairs, their own account of themselves made them appear so mean. But he said he found out that they were only angry and therefore unreasonable. A Magistrate not knowing English ways, and seeing before him on the one hand an Englishman intensely excited and making the worst of his case in consequence, and on the other hand a meek individual (who has probably been intensely insolent outside) with the air of a suffering martyr, would naturally become indignant at the idea of the brutal Saxon trampling on a poor inoffensive ryot; and yet it often turns out that the swaggering Englishman has simply been made a victim of by the meek villager, and I know as a fact that the villager who salaams to an official down to the ground can not only cheat a non-official European, but be insolent to him to a degree outside the court. Of this a Bengali Babu would know nothing. He meets the Anglo-Indian's contempt with hatred, and however honestly he might wish to decide the case, he would certainly be biased against the Englishman and give full weight to his indiscreet manner and utterances. As for the Punjab Rais, my experience is that they would thoroughly dislike to have European cases made over to them. The experiment has as yet to be tried, I believe, of introducing Bengali Magistrates among the manly Punjabi people. The Magistrates who would be invested would probably be Raíses. The Punjab Raíses, as far as I have seen, has a great respect for Englishmen, and I should greatly doubt whether an Englishman who richly deserved fining or imprisonment would ever get it. There are black sheep among English planters, as I have seen, who are capable of every kind of meanness, and on whose statement I would not rely for a moment. The other planters would probably delight to see a European Magistrate punish such a one, but his punishment by a Bengali Babu would probably be resented by them, as a body. This perhaps should not influence us, but then it does not appear what use there would be in trying a Bengali in the Punjab and raising the question. Further, there would be the real fear in the planters that a foreigner who *did not* understand them would convict them on what was really false evidence. The worst fear they would have would be that their wives might be dragged into court on a false charge before a foreigner who would not understand their ways. A proper-minded Englishwoman dislikes going into Court as much as any *pardáh nashin* can do, and should not be exposed to it, if possible. At present she is not much exposed to it; under the contemplated

arrangement she would be. I think the Punjab Raís would be as much annoyed at having an Englishwoman of respectability in court before him as an English Magistrate would be, and that he would consider it no privilege at all. Moreover, the Raís would not be able, as an English Magistrate could, to distinguish between a modest English lady and a masculine and overbearing woman. They would to him be all *Mem-Sáhibs* entitled to respect, whose word was beyond suspicion. Though he might be able to distinguish between an English gentleman of honourable feeling and an unworthy Englishman with good clothes, he would not be able to distinguish in the case of ladies. He has met gentlemen and *pseudo*-gentlemen: of ladies he knows nothing. It may be answered that if natives, and educated ones to boot, should not try Englishmen and women, because of their ignorance of their ways and manners, a native should not be liable to be tried by an Englishman. I would reply that, in cases triable by a 1st class Magistrate, I would always allow a native to be tried by a Native Magistrate, if he wished it.

In conclusion, I would say that I doubt if legally an Englishman can be tried by a native. It is his birthright to be tried by his peers. By coming to India he does not cease to be a subject of Her Majesty. It may be said that Englishmen should not have invested their capital in the country till they were assured that they would not be tried by natives. But their capital was often locked up in the country long before there was any idea of taking any such step as is now contemplated, and had the present Bill been foreseen, much capital would have been kept out of the country. It is the birthright of certain native ladies to be *pardáh nashins*, of certain Rájas, and others to be exempt from attendance in court; of Mussalmans to marry four wives. The Englishman does not ask that his wife should be considered *pardáh nashin*; he does not object to go to court; and he does not want four wives. His birthright is to be tried by his peers. We do not interfere with birthright of the natives, and there is no reason to interfere with the birthright of the Englishmen. The natives have so many privileges of their own that to try to make every body equal by taking away the Englishman's sole birthright appears like giving to him that hath by taking away from him that hath not even that he hath.

I have, &c.
(Signed) C. E. GLADSTONE,
Deputy Commissioner.

LETTER No. 231, from the OFFICIATING COMMISSIONER and SUPERINTENDENT, Deraját Division, to the SECRETARY to GOVERNMENT, Punjab, dated Dera Ismail Khan, 10th May 1883.

WITH reference to your letter No. 346, dated 27th March last, asking

Deputy Commissioner Dera Gházi Khan,
No. 338, dated 24th April 1883.

Deputy Commissioner Dera Ismail Khan,
No. 296, dated 2nd May 1883.

Deputy Commissioner Bannu, No. 0, dated
4th May 1883.

for my opinion on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to submit copies of letters on the subject from the

Deputy Commissioners of this Division.

2. Considering the position occupied by us in this country, the barrier of caste and prejudice that prevents any real social intercourse between us and the various races in this land, and the low estimation in which the women of this country are held, I am of opinion that the proposed amendment is inexpedient, and there has been nothing advanced to show that any such change is necessary or was desired by the Native community.

I have, &c.
(Signed) E. L. OMMANNEY,
Lieut.-Colonel and Officiating Commissioner.

LETTER No. 338, from the DEPUTY COMMISSIONER, Dera Gházi Khan, to the OFFICIATING COMMISSIONER and SUPERINTENDENT, Deraját Division, dated 24th April 1883.

WITH reference to your Circular No. 77, dated the 20th instant, asking my opinion on the Bill to amend the Code of Criminal Procedure, 1882, as far as it relates to the exercise of jurisdiction over European British subjects, I have the honor to state that I have conversed with the higher Native officials and other educated Natives of this district on the subject, and that whilst they approve the object with which the Bill was introduced, still they state that they see no advantage which will accrue to their countrymen, if allowed to try European British subjects for criminal offences, and they would sooner see the Bill abandoned than risk a break in the good relations which have always existed between Europeans and Natives in the Province to which they belong. The chiefs and people of this district view the introduction of the Bill with indifference. My own view coincides generally with that of the Native gentlemen as given above. I consider that the class for whose benefit the Bill is introduced will practically gain nothing by it, whilst the opposition that the Bill has aroused is so considerable that it is not worth while to excite so much discontent to gain so little.

I have, &c.

(Signed) F. W. R. FRYER,
Deputy Commissioner.

LETTER No. 296, from the OFFICIATING DEPUTY COMMISSIONER, Dera Ismail Khan, to the OFFICIATING COMMISSIONER and SUPERINTENDENT, Deraját Division, dated 2nd May 1883.

I BEG to return enclosures to your Circular No. 77, dated 20th ultimo, marginally noted, and to say that in my opinion Mr. Ilbert's Bill for amending the Criminal Procedure Code, 1882, is both unnecessary and politically dangerous.

Under-Secretary to Government, of Punjab's
No. 346, dated 27th March 1883, with a Bill
to amend Criminal Procedure Code.

I do not think that the time has come, or is yet even within measurable distance, when European British subjects in up-country stations will believe that a Native magistrate is capable of giving them a fair trial. This feeling alone ought, I think, to condemn the Bill.

That there is no necessity for it was, I think, demonstrated in the debate on the Bill published in the Supplement to the "Gazette of India," of April 21st 1883, and that such a Bill is politically dangerous, is proved by the agitation which it has created throughout India.

I do not wish to say a word against the ability and impartiality of the Native magistrates on whom it would confer jurisdiction over Englishmen, but I will say that it is probable that the strongest supporter of the measure, if a man of practical Indian experience, would, were he himself or one near and dear to him to be tried in an up-country station by a Native on a criminal charge of which he was innocent, feel a profound distrust in his judge and endeavour to have his case tried by a fellow-countryman.

I have, &c.

(Signed) S. S. THORBURN,
Officiating Deputy Commissioner.

LETTER No. 0, from the OFFICIATING DEPUTY COMMISSIONER, Bannu, to the OFFICIATING COMMISSIONER and SUPERINTENDENT, Deraját Division, dated 4th May 1883.

With reference to your Circular No. 77, dated 20th ultimo, and its enclosures, I have the honour to report as follows.

2. I consider the proposed amendment of the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, most unnecessary and likely to be injurious in more ways than one.

3 The object of the Procedure Code is to secure the efficient administration of justice. The class of Englishmen who come before the criminal courts in the mofussil consists in most cases of men like engine-drivers, soldiers, &c., who cannot talk good English, and most of whom use such provincialisms and slang and elliptical expressions that even European British subjects reared in Britain have some difficulty in understanding their whole meaning. I have felt this difficulty myself in my short experience, and am sure that even a few years' education in London, or any other large city in Britain, would not enable a Native of India to master our various provincial dialects sufficiently to do justice in many cases; and it is not desirable that justice should miscarry in any one case. The grievance would be particularly felt in the Punjab, where our Native assistant commissioners are men who have had no training whatever in England.

4. Again, we have to consider the violent animosity that there is against Englishmen as unbelievers in the heart of every true Musalmán. I have little personal knowledge of Hindus and Parsis. It is perhaps possible that they could without danger be entrusted with power to arrest and try Englishmen, but I am quite certain that no such power ought to be confided to Musalmáns, and yet in working the proposed law, how could Musalmáns be excluded? No such invidious distinction would be tolerated by them, and the fact of their exclusion would at once intensify the venom of class hatred and religious antipathy, which it should be our object to let slumber on until it expires through *inertia* and *coma*.

5. But I hold that the exclusion of Musalmáns is none the less necessary; many of them are as loyal as Musalmáns can be, yet at a time of trial and mutiny such men could not resist the pressure of their surroundings. When their relations and friends were hounding them on, our Native assistant commissioners could not stand forward and disregard public opinion. Their properties, their families, "their all," would be at stake, and it would be impossible for them, however well educated and sensible, to stem the tide even if they wished to do so. Such a rising will take place only when our English garrisons are dangerously weak or when we have experienced heavy reverses; that such misfortunes may befall nations is, as history proves, not impossible, and we ought not to put into the hands of our subjects the formal power to cripple by sudden arrests at a critical time our scattered English representatives in the mofussil.

6. It may be said that I am imagining an impossible danger, but it is not so; I have resided for over six years in the Hazára and Pesháwar Districts and have mixed with the people on terms of friendship and intimacy. I have thus learnt how the Musalmáns as a body hate us, and how unceasing is the stream of seditious sympathy with the disaffected in Hindustán and in the independent states and tribes on our North-west Frontier.

A loyal Musalmán in the Peshawár District is regarded by all his fanatical surroundings with antipathy; when he dies in our service, or as our pensioner, many a mullah will refuse to bury him; and a dying jagirdár will at times resign his allowances so as not to imperil his soul by dying as our dependant.

7. An extra assistant commissioner, a Musalmán, with whom I have had constant intercourse, is, I suppose, one of our most loyal subjects, but he has admitted to me that if a "jehád" were proclaimed, and if, owing to British weakness, he thought it would be successful, then he could not be on our side any longer, and that we should see him in the van of the attack. He likes and respects our power, and he hoped we shall never let ourselves get sufficiently weak to invite a successful Musalmán rising; for he had large estates and family interests which, apart from his religion, would oblige him to declare for the winning side. Here were admissions made in private friendly intercourse, and an English critic might say that the judgment of a man of experience would secure him from being led to join a rising which could end only with disaster for the mutineers; but here I join issue with the critic. That extra assistant commissioner's judgment is human and liable to error; he is a sound Musalmán, and is as likely as others of his belief to

be carried away by ardour for the glory of Islam at a season of religious revivalism. He would perhaps give us some underhand information or help, but that would of course depend on the temporary strength or weakness of his bigotry. Similar admissions have been made to me in private conversation by other loyal Musalmáns who were not in service, and I urge that the existence of such a persuasion is a fact that cannot be safely ignored.

8. Of other reasons that occur to me I will mention one only, and that is the disastrous effect not only on our national prestige but also on our self-respect that would result for allowing the enforced appearance of Englishwomen, our wives and sisters, before the court of a Native magistrate either Hindu or Musalmán. The subject is one from which my experience of native morality and modes of working spite makes my mind recoil.

9. To recapitulate, my arguments are (1), that the administration of justice to low-class European British subjects would be not bettered but weakened by giving the proposed powers to Indians, however well educated, who had only acquired scholastic English; (2), that the powers, if given to Hindus and Parsis, must also be given to Musalmáns, and that in the hands of the latter they would form a means of administrative weakness and constitutional danger; (3), that to oblige our womenkind to appear before criminal courts presided over by Natives would be a grave scandal.

10. The Bill could not be withdrawn now without causing a great out-cry among certain classes who make themselves heard, but who form in fact an insignificant minority among the millions of this land. Still the majority of educated and reflecting natives would, I believe, be glad if the measure could be abandoned. The few whose opinions I have been able to inquire into welcomed the Bill at first, but when they saw what violent animosities the discussion was raising, and how it threatened to break off the *rapprochement* that had been lately progressing so favourably between the races, they wished and still wish that the agitation and excitement could be smothered without delay.

The best plan would, in my opinion, be to admit that mutual sympathy and knowledge are not yet sufficiently strong and ripe to warrant passing the Bill into law,—the newspapers, English and Native, both prove this every day.

The time has not come yet, and precipitation would be fatal.

I have &c.

(Signed) H. C. THORPE ROBINSON,
Officiating Deputy Commissioner.

LETTER from the HONORARY SECRETARY to the PLANTER'S ASSOCIATION, Kangra Valley, to the UNDER SECRETARY to GOVERNMENT, Punjab, dated 3rd May 1883.

WITH reference to your No. 346, asking for our opinion on Mr. Ilbert's Bill, as sent by you to me, receipt of which I acknowledged on 24th ultimo, I have the honour to inform you that I read your letter at a general meeting of the Association yesterday, Wednesday, May 2nd, and am requested to inform you that the feeling of the meeting was a strong one against such proposed change, and that I should forward through you, to His Honor, the Lieutenant-Governor, the text of the protest as passed by a special meeting to consider the subject on Wednesday, March 21st, which has attached to it upwards of 70 signatures.

TEXT of Resolution passed at a Meeting specially called to discuss the matter on Wednesday, March 21st :—

"That this meeting records its strongest protest against any amendment to the Criminal Procedure Code which will invest Natives with jurisdiction in criminal matters over British and European subjects."

LETTER from SARDAR ATAR SINGH, C.I.E., Chief of Bhadaur, to the UNDER-SECRETARY to GOVERNMENT, Punjab, dated Ludhiána, 8th May 1883.

IN reply to your letter No 346, dated 27th March 1883, forwarding for opinion a copy of the Bill to amend the Criminal Procedure Code 1882 so far as it relates to the exercise of jurisdiction of Native officers over European British subjects, I beg to state that I have very carefully read it, and also the opinions of the Native and European gentlemen as they appear in newspapers.

2. The provisions of the Bill appear to be very proper, as the power is not to be conferred on Native officers generally, but only on those select few whose fitness has been proved. But it is with great regret I notice that the matter has been placed in a very delicate position. Taking that into consideration, I would advise that the Bill may be allowed to stand over for a time to enable the Government to judge how far the apprehensions now entertained are based on facts.

Even after that, when the Bill is passed, it should be provisionally for some time, to show how it suits practically.

LETTER from SARDAR BIKRANA SINGH, Ahluwalia, to the UNDER-SECRETARY to GOVERNMENT, Punjab, dated Jullunder, 10th May 1883.

IN reply to your letter No. 346, dated the 27th March last, with which you sent me a copy of the Bill to amend the Code of Criminal Procedure, 1882, for my opinion, I have the honour to state that I have perused the Bill carefully, and do not find a single clause or sentence in it which needs amendment or alteration.

The proposed amendment of law does not introduce any abrupt change into the present system of legal administration. Since it is not the object to raise all Native magistrates to the rank of justices of the peace, but such of them only as have stood the test of stiff examination, and have thus proved themselves to be possessed of merit, and who have satisfied the Government they serve under as to their fitness for the rank by serving long and faithfully, I cannot help regretting that the opponents of the Bill have produced so much agitation in the country, which is calculated to induce a breach of the good understanding which exists between the English and Native communities whom Providence has thrown together in social and political union, which union will increase in strength by the continuance of good feeling between them.

In my humble opinion, the apprehensions of the opponents are not well founded. Experience shows that the Native judges of the High Courts and the Native magistrates of the presidency towns have acquitted themselves honourably and ably of their responsibilities, and that the removal of the existing restrictions on the judicial powers of Native magistrates, as regards trial of European British subjects, based as those restrictions are mainly on race distinctions, will in no way be inexpedient and injurious to the rights of the European British subjects. On the other hand, in a political point of view, the results will be most satisfactory: the Natives will be impressed with a sense of the broad policy and liberal intentions of the British Government towards them when they find that it is willing to remove the invidious race distinction, and amicable feelings, respect for each other's thoughts and actions, and mutual sympathy will spread extensively between the ruling community and the subject classes.

OPINION of AGHA KALBI ABID, Khan Bahadur, Honorary Assistant Commissioner, Amritsar, on the Bill to Amend the Code of Criminal Procedure, 1882.

ON the question whether the Natives of India who are admitted to the Civil Service and exercise highest powers be held incompetent outside the Presidency towns to try European British subjects, a disability based on race distinction, my opinion is against it.

To give Natives such powers is to realize in practice that which is yet in words. Her Majesty's Proclamation of 1858 lays down that all subjects will be eligible to be appointed to offices to which their education and ability entitle them, without any distinction of race or creed.

It is strange that Natives should pass through all ordeals and tests of education and hold high offices such as those of civil and sessions judges, and yet be incompetent to try a European British subject.

When Natives of India are competent by reason of their education and abilities to hold such offices, and there being no natural distinction between the two races, I do not see where the disability lies.

The distinction of conquerors and conquered is sufficiently maintained (to the advantage of the former), in other important matters. All high offices, civil and military, are reserved for them. They become volunteers, and can keep arms under the Arms Act.

The proposed law is simply intended, by removing the disability existing under the Criminal Procedure Code, to cure the following defects;—(1), that a Native may hold such a high office as that of a civil and sessions judge and yet be incompetent to try a European; (2), a Native should be incompetent to try a European while his subordinate may; (3), that a Native in the Presidency towns may try a European, but not in the Mofussal; (4), a Native, by the existing state of the law, may pass a decree against a European affecting his property and person (he being as liable to arrest and imprisonment as any other), and yet the soundness of a Native judge's judgment and honesty be doubted while passing a sentence on the criminal side similarly affecting his property and person.

The Government is bound to remove the above-mentioned defects which exist in the administration, a state of things against equity and equality, and thus remove one of the causes which keep the two races separated.

When Providence has decreed that two natives of different countries should meet, and in course of time form a mixed society, it is natural that one of them should concede some privileges to the other as a compensation for intruding upon the rights of the other. The British Government, a political name for the British nation, have, in making common and just laws according to their own views (views which are in some cases based on their own national convictions), snatched from the Natives the privileges of satti, baldán, human sacrifice, &c., and in some cases, as in that of exclusion from inheritance by reason of loss of caste, have also encroached upon our religious feelings.

Why then the so-called privilege of Europeans, "to be tried by their own peers," which strictly speaking applies only to England?

(The circumstances under which the privilege was obtained, *viz*, when the Saxons had lost their confidence in the Norman King and his hired judges, should not suffer in India.)

Europeans have the option to come to, and reside in, India for gain, and thereby subject themselves to the proposed jurisdiction of strangers just as *ex necessitate* they have to submit to the jurisdiction of Turks, Egyptians, Chinese, Japanese and natives of other countries of the world, where they happen to go for their gain. The jurisdiction of strangers is not forced upon them in their home (Great Britain), which may perhaps be against their privilege. In the present state of India the right of a free nation (Natives of India also being a free people) to be tried by its own members cannot be conveniently observed. The right must undergo some modification, which it has already wholly undergone in the case of Natives, and is intended very partially to be effected in the case of Europeans. This seems to have been the construction put upon the words which secure the privilege to Europeans when making them subject to the jurisdiction of strangers in Ceylon and other countries. If it is a necessity with Europeans that they should be tried by their own countrymen, the same necessity exists with stronger reasons in the case of Natives that they should be tried by Natives. A judge should have a knowledge of the manners and customs of the people he tries.

The Natives that are to be invested under the proposed law have received a high English education, and their sojourn in England has given them a knowledge of the manners and customs of Europeans and insight into their

character. Therefore the Natives can also justly demand that they should be tried only by Natives, a demand which, if conceded, will deprive Europeans of many lucrative posts, while the powers proposed to be conferred upon Natives will put nothing substantial into their pockets.

I agree not only to the amendments proposed by the Bill, but also agree to the proposal of Sir Charles Aitchison, the Lieutenant-Governor, that all 1st class magistrates should have the power of trying Europeans.

The introduction of different departments—such as Revenue, Canal, Salt-petre and Customs—in the country necessitates the residence of Europeans in the Mofussal. It will thus be necessary to keep judges ready at hand competent to try a European on the spot, and not compel the complainant and witnesses, mostly Natives, to go to a station where a justice of the peace resides. Such general investiture with power will tend not only to make the trial of those offences easy which a justice of the peace alone can try, but will indirectly lead to the suppression of crime.

OPINION of HAJI KHAN MUHAMMAD SHAH, Khán Bahádúr, Honorary Magistrate, Amritsar, on the Bill to amend the Code of Criminal Procedure, 1882,—dated 6th May 1883.

I AM in receipt of your letter dated 27th March 1883, giving cover to a copy of the Criminal Procedure Code Amendment Bill, and inviting my opinion thereon,

As far as possible, I have carefully gone through every section of the Bill, and have considered the grounds which have been advanced in support of, or against it, in the Legislative Council, and those advanced by newspapers and at public meetings held in the different towns in India. I have patiently deliberated upon the results which would ensue on the Bill being passed into law. For the reasons detailed below, I think that the amendment of that portion of the Criminal Procedure Code 1882 which relates to jurisdiction over European British subjects is necessary and expedient according to the feelings of the people of the country, and on account of administrative necessity.

It is altogether opposed to the policy of the British Government that any law based on race distinction should be allowed to remain in force.

On looking over the legislative history of India, as connected with the judicial business, it appears that, previous to the year 1833, not only cases relating to inheritance and adoption, but all other kinds of cases also, in which Hindús and Muhammadans were concerned, were decided according to the Hindu and Muhammadan laws; and that Maulvís and Pandits were invited to the courts to expound the laws. Before that year no Native held a judicial post. The civil and criminal cases in which Europeans were concerned were heard by Europeans only (who were Company's servants). In 1836, the Company desired to improve the form of their government in the mofussil, when they increased the powers of Native judges and conferred judicial posts on Natives.

A law was then passed providing that no person whatever could on account of race, sect, or religion be exempted from the jurisdiction of the civil courts of the Company in civil suits. At that time Europeans raised a great clamour, and showed great opposition to the Native judges being vested with the powers for deciding civil suits in which Europeans were concerned, and they styled this Act by the name of "Black Act," i.e., the act of black men (Natives).

The ground put forward against the Act was that it endangered European property and capital. But during the 50 years that have passed since this law came into force, no loss has ever occurred to European property and capital. On the contrary, they have received full justice from Native judges, as is clearly proved from the fact that in no civil suit in which Europeans were concerned has any complaint been ever made about the Native judges having done injustice to them.

The party opposed to the present Bill allege that there was no objection to the Native judges being invested with civil powers, as this involved only a property question, while in the case of criminal powers honour and reputation

are at stake. As far as I can think, I am against this view. In civil cases, too, a person can at once be reduced to sheer poverty; can be punished with fine, &c., for disobedience of orders or contempt of court; and in case of default of payment of the amount of a decree, the judge can issue a warrant for his arrest and can send him to jail as a civil prisoner.

When the Native judge has been considered, without consideration of race or creed, as qualified to decide civil suits impartially, it is not understood why he should be unable to decide petty criminal cases in which Europeans may be concerned.

Great changes have occurred in the procedure followed in deciding criminal suits since the last 50 years. At first no magistrates (European or Native), except those of the judges of the Supreme Court, could punish Europeans. When the number of European residents of India increased, great inconvenience was felt in bringing European offenders charged with petty offences from the mofussil to the Supreme Court. In 1849, during the time of Lord Dalhousie, a Bill was drafted providing that magistrates holding courts in the mofussil districts, or outside the Presidency towns, should be vested with the powers of justices of the peace; but as the Indian Penal Code had not yet been framed, the measure was, at the instance of Lord Dalhousie himself, postponed.

From this it is clearly evident that only a few years after the investment of Native judges with powers for trying civil suits in which Europeans were concerned, the Government of India had proposed to invest them with criminal powers also. In 1872, when the question of amendment of the Criminal Procedure Code came on, the Legislative Council, with the majority of one vote only, decided that the Covenanted Civil Servants, (provided they be Europeans) should be appointed justices of the peace outside the Presidency towns. But it is remarkable that the minority consisted of His Excellency the Governor-General, His Excellency the Commander-in-Chief, the Lieutenant-Governor of Bengal, Sir Richard Temple, and other honourable and experienced gentlemen well acquainted with the state of the country and responsible counsellors of the Empress of India, whose positive opinion was that Native Covenanted Civil Servants should also be made justices of the peace.

This amendment, which was looked upon by the high officers of Her Majesty's Government as opposed to the policy of Government, did, at the time, injustice to a few Native covenanted servants only. But during the succeeding 10 years many other Natives have been, and are being, admitted to the Covenanted Service; and some of them have been raised to the posts of district magistrate and sessions judge. It is therefore desirable for reasons of administrative necessity that such a distinction (which has had its origin in race feelings) should be done away with.

If a Native be appointed a district magistrate in a district, and a European commits an offence in that district, and though the offence be punishable by the district magistrate, but the officer, being a Native, be not able to try the case, the result would be that either the district magistrate would have to transfer the case to the court of a subordinate European magistrate possessing the powers of a justice of the peace, or that he would have to forward the case to the court of some other European magistrate. In the first case, the procedure is disgraceful to the Native district magistrate, and he would experience a great loss in his influence and respect (which it is a duty of Government to preserve) in the eyes of the people of the district. In the second case, the European offender would be compelled to travel from one place to another under custody to answer a petty charge, perhaps punishable with a fine only.

The opponents of the Bill lay a great stress on the fact that, among other privileges, they are entitled to their being tried by officers of their own nationality. As far as I have been able to consider this matter, I do not think this view can be accepted. Had it been really a recognised birthright of Europeans, how could the Native magistrates in the Presidency towns of Calcutta, Bombay and Madras have been invested with powers of sentencing Europeans to imprisonment, the term of which might extend to two years including solitary confinement, to fine up to Rs. 1,000 in amount, and to whipping; and how could Native judges in the High Court have unlimited

powers of punishment over Europeans? In my opinion, such laws, which are based on race distinction, are relics of olden times, when the Natives were generally devoid of high education and good training. At that time, indeed, it was as inexpedient to bestow powers on Native judges as it is now inexpedient, impolitic and unjust, to withhold these powers from them.

In criminal cases, in which the complainant may be a European, and the accused a Native, the Native magistrates have had jurisdiction for a long time past. During this period, evidently, no complaint has been made of any Native magistrate having exercised any partiality on account of race feelings in such cases. Hence it can be hardly believed that they would exercise improper severity towards European offenders. Especially the classes of magistrates, whom it is proposed to give jurisdiction (over European British subjects), subject to certain rules, are very trustworthy, they having received high education and good training and being men of experience. It is not expected that they would knowingly commit an illegal act. I, who have seen a good deal of the Sikh days, can make a just estimate of the many advantages that have accrued to this country from the British rule; and, in my opinion, the prosperity and well-being of the country depends on the existence and daily increase of friendly relations between the conquering and the conquered races. Had I the assurance that the legislative change likely to be brought about by the Bill would prove destructive to the progress of friendship between the two nations, I would surely have been altogether against the amendment; but my impressions are not such. I strongly believe that the more the race distinctions are (not?) made to interfere with the general legislation of the country, the more strongly would friendly feelings and sympathy be preserved intact between the conquerors and the conquered. On this ground I endorse every section of the Bill; nay, I cordially agree with the just opinion of the Honourable Sir C. Aitchinson, Lieutenant-Governor of the Punjab, (who has observed) that every 1st class Magistrate, be he a Covenanted or Uncovenanted servant, whether a Native or European, should be appointed a justice of the peace, provided his qualifications, experience and impartiality are recognised by the local government.

LETTER from PANDI RAM NARAIN, Secretary to the Indian Association, Lahore, to the Secretary to Government, Punjab, dated Lahore, 19th May 1883.

IN reply to your letter No. 346, dated the 27th March 1883, I have the honour to forward the following opinion of the Indian Association on the Bill for the amendment of the Code of Criminal Procedure.

2. The Association purposely abstains from much comment on the principle of the Bill. It is scarcely necessary to say that they warmly approve of it, and consider that the heartfelt gratitude of the people of India is due to the government of His Excellency the Viceroy for the high-minded and statesmanlike proposal to remove the existing invidious distinction between Native and European Criminal Judges. The Association only deem it proper to observe here that if the change is ever to be made, and the disqualification of Native Judges removed, it is better to make a beginning now, so that the course of reform may be gradual and its action carefully watched, than to introduce a sweeping measure under the pressure of extreme necessity. The Association have no reason to think that the opposition to the Bill on the part of the Anglo-Indian community will be less bitter at any subsequent time than it is now. Indeed, the objections now put forward are directed against the very principle of the Bill, *viz.*, the obliteration of all distinction between them and the natives of the country, and there can be no reasonable doubt that this measure, if it were to be dropped now, would meet with still more violent opposition when re-introduced on some future occasion under more pressing administrative necessity.

3. The Association are of opinion that the provisions of Section 1 of the Draft Bill are sufficient to meet the purpose of the amendment, *viz.*, to remove from the Code at once, and completely, every judicial disqualification based merely on race distinctions (paragraph 2 of the Statement of Objects

and Reasons). The effect of it will necessarily be to disqualify members of the Uncovenanted Service, European and Native, from being made Justices of the Peace. Some European British subjects in that service are already Justices of the Peace; but it is apprehended that, under the saving provisions of Section 7, their existing power will not be affected. The disqualification will only be for the future. The Association regret this effect of the Bill on European Uncovenanted Magistrates, and they notice that this is made one of the grounds of objection to the Bill. But they are unable to see how an effective remedy can be provided under the existing circumstances. Bearing in mind the object of the Bill, the only remedy can be the insertion of an additional 5th clause in the first section making members of the Uncovenanted Service eligible as well. But, as this amendment would necessarily qualify Natives as well as Europeans, therefore it is apprehended that this suggestion will not meet with the approval of the opponents of the Bill, but rather intensify their opposition.

4. With reference to this section, the Association would recommend the insertion of a *proviso*, to the effect that the Magistrates invested with jurisdiction to try European British subjects should possess a competent knowledge of English. It would be a rational grievance to an English, or Anglo-Indian, accused if the Magistrate were quite unable to understand him or his English-speaking witnesses. This is now used as an argument against the Bill, and, being founded on reason, should, in the opinion of the Association, be effectually provided for. They consider that European prisoners are entitled to be placed on a footing of equality in this respect with native prisoners whose European Judges are expected to be conversant to some extent with their vernacular.

5. The Association would here, briefly, advert to the principal objections made against the Bill, notably in the memorial of the Anglo-Indian community. They are mainly these:—

- (1.) That the natives of India are a heterogeneous race with numerous personal rights and privileges founded on conquest, tradition and prescription, and that therefore the privileges claimed by European British subjects are neither anomalous nor unreasonable.
- (2.) That natives know nothing of the inner life of Europeans, and their modes of thought and springs of action, and are hence disqualified to sit in judgment over Europeans accused.
- (3.) That the natives of India hold the female sex in utter contempt and keep them in a state of degradation, and hence it would be extremely humiliating for an Englishwoman to appear as a criminal at the bar of a native Court of Justice.
- (4.) That the members of the Native Civil Service do not command the confidence of the European community.

6. The first argument simply ignores the tendency of all civilized communities to minimize the points of difference between their component sections, and to blend them into one harmonious whole. The past history of all European countries abounds in examples of the abolition of individual or class privileges for the benefit of the commonwealth; so do the records of British rule in India. Natives have had to surrender many of their cherished customs and rights because they were deemed incompatible with the existence of enlightened government in the country. The existence of class rights and privileges is generally an index of a low state of civilization, and by itself is not a thing desirable. What examples are quoted by the objectors are not in the least apposite. The Indian law recognises no exemption of natives of rank, and *purda-nashin* ladies, from appearance in *Criminal Courts*, and makes no distinction between them and the Natives of the lowest class.

7. The second argument is a vague, general proposition, incapable, in the opinion of the Association, of being illustrated by concrete examples. It is really a bold assumption of the facts in issue. The memorialists, however, seem to forget that, in bringing it forward as a ground of objection to the Bill, they pronounce a sentence of unfitness on the whole body of European Judicial Officers. Europeans in India live in comparative publicity, and the Association think they would be justified in saying that in India natives come to know more of the ways of life and the manners and customs of Europeans than Europeans do of the natives. If the native is disqualified to judge

the European on this ground, the Europeans would be doubly unfitted to judge the natives. As a matter of fact, however, most European Judges are found well able to decide cases affecting natives. *A fortiori* there is every reason to believe that natives would be found at least equally efficient in European cases; an inference which is strengthened by Native Judges having been found competent to dispose of civil cases in which Europeans are concerned.

8. The third argument is absolutely unfounded on fact. The Association repudiate the imputation cast on the natives of India that they despise their females and ill-treat them. The Association are pained and surprised to see such an argument used at all. So far from the imputation being true, it is a matter of every-day experience that native *purda-nashin* ladies, if they ever have the misfortune to be dragged into a Criminal Court, are very considerately treated by native magistrates; and there is really no reason whatever to suppose that their conduct would be different when an Englishwoman is brought up before them as an accused person. No complaints have yet been made against their behaviour in civil cases wherein European women have appeared before them either as witnesses or as parties to actions.

9. The last objection as to the *personnel* of the Native Civil Service does not require detailed comment; on this head the Association would content themselves with observing that Government may be trusted to secure the most competent officers for the service, and it is scarcely necessary to say that the Local Governments will exercise their powers under Section 1 of the Bill with discretion, taking care to confer jurisdiction to try European British subjects on the most competent officers.

10. The opponents of the Bill have suggested that Native Civilians who are so qualified should be placed in charge of districts where no Europeans are to be found. The memorialists seem to be unconscious of the injustice this proposal entails on the Native Civilians, by banishing them perpetually, as a reward for their services, to such undesirable localities as are avoided by Europeans. The measure, moreover, is impracticable, as there is hardly a district in India where some Europeans do not reside; and even if there be any such now, it is against reason to reckon upon its so continuing in future, unless prohibition be imposed on Europeans against settling in districts placed under Native Civilians. The absurdity and unfairness of such a proposal need no further comment.

OPINION of the Anjuman-i-Islamiya, Amritsar, on a Bill to amend the Criminal Procedure Code, 1882, dated 15th May 1883.

THIS Association has most carefully considered the reasons advanced both for and against this Bill, and the members are unanimously of opinion that the provisions contained in the Code should be modified, as they are merely based on an invidious class distinction.

From the Statement of Objects and Reasons of this Bill as stated, it would appear that it is intended to remove the judicial disqualification of some Native Magistrates in criminal proceedings over European British subjects.

It is indeed unjust and anomalous that while Natives of India are admitted to the Covenanted Civil Service, and held competent to discharge the highest judicial duties, they should be deemed incompetent to be Justices of the Peace.

Though there are some upright, learned, just and experienced European gentlemen who are in favour of this Bill, yet a large majority of the European and Eurasian non-official community is opposed to it, and they allege that as some personal rights and privileges of natives are still protected by law, such as the exemption of ladies of distinction, and of some native gentlemen, specially allowed by Local Government, from personal appearance in Civil Courts, there is no reason why their privileges and rights should not likewise be protected. The Association most respectfully submit that this privilege, which is set forth as an example, is the only one recognised in the administration of some proceedings of the Civil law, and it involves no injury to, or entails no disability upon, any other class of Her Majesty's subjects.

Moreover, in the opinion of the Association, the argument upon which the opponents of the Bill seem to lay so much stress is altogether *irrelevant*, because the Bill does not propose to curtail any of the rights and privileges enjoyed by different classes of Her Majesty's subjects in this country; it only aims at removing the disqualification of a judge or magistrate, which is based merely on race distinction. For this one single privilege which is enjoyed by the natives of this country, there are many privileges enjoyed by the European British subject in the administration of criminal law in India. The jurisdiction of Criminal Courts over a European British subject in awarding punishment is very limited. He can appeal against small sentences of fine or imprisonment, from which there is no right of appeal in ordinary cases. He may claim to be tried by a mixed jury, or a mixed set of assessors, being either Europeans or Americans, or both Europeans and Americans, whose decision is final.

The Association most respectfully submit that, to the best of their knowledge and belief, native officers have no special jurisdiction over their native fellow subjects such as is conceded to their European brother officers over their countrymen; and therefore on an occasion like the present, when the object simply is to remove certain judicial disqualifications based on class distinctions from native officers of tried ability and integrity, it is unjust and out of place to draw arguments from the privileges respectively enjoyed by the Europeans and natives of this country.

It is unnecessary to give here the long list of those cherished rights of the natives which have been curtailed. The Association would rather beg to invite the attention of Government to the speech of the Honourable Dr. Hunter, who has very ably and minutely discussed the subject. There is, however, one important point which that Honourable gentleman seems to have overlooked. Formerly the Mahomedan law of evidence prevailed in all the courts of justice. But it has slowly and gradually been done away with, and a law founded on the principles of English jurisprudence has been introduced which has totally infringed some of our best rights and privileges.

In 1836, when the Honourable East India Company ruled that no person should, by reason of place, birth, or descent, be in any civil proceedings exempted from any jurisdiction of any of the Company's Courts, and admitted natives to a large share of posts in the Civil administration, the Europeans resented the measure very much and protested against their being placed under the jurisdiction of the country tribunals, on the ground that their capital would not be safe. But their allegations have all proved unfounded.

The opponents of the Bill urge that civil jurisdiction is a different thing from a criminal one. The former affects property, and the latter both personal character and liberty. But, in the opinion of the Association, such is not the case. A Civil Court can give judgment against any person in a suit for fraud or libel; can send him to prison for debt; can punish him for contempt of court; and can issue a warrant for his arrest in case of his non-attendance as a witness. When the exercise of civil jurisdiction with all these powers by Native Judges over Europeans has not given rise to any injustice, it is unreasonable to suppose that they, especially those to whom the Bill proposes to invest with powers, and whose ability and integrity are admitted on all hands, will be swayed by race prejudices, when trying Europeans in criminal cases.

In all those cases in which Europeans have complaints against natives, they freely resort to Native Magistrates' Courts for redress, and, as far as the Association is aware, the Native Officers presiding at these Courts have not been swayed by any race prejudices. What ground then is there for apprehension that when trying charges brought by natives against Europeans they will be actuated by any such feelings?

The scope of this Bill is narrower than that of the one brought forward under Lord Dalhousie's Government in 1849, which provided that, outside the Presidency towns, all Magistrates of whatever class should be competent to pass all sentences, but that of death, on every British subject, and the measure was postponed only till the amending of the criminal law was effected by the Penal Code. From this it would appear to be evident that when Europeans were subjected to the Civil jurisdiction of Native Courts, it was really in contemplation that this measure should at no distant date be

followed by that of giving criminal jurisdiction to Native Magistrates over Europeans. In 1872, when the Criminal Procedure Code was under revision, this question came up for discussion before the Council, but was lost by a majority of only a single vote. It is, however, to be remembered that the minority consisted of the Governor-General, the Commander-in-Chief, and all other high and responsible advisers of the Government of India, who were strongly of opinion that Native Magistrates, at least those of them who had been admitted to the Civil Service, should also be invested with the powers conferred upon their European brother officers. There have been great changes within the last 10 years; some of these native Civilians, who were then young and untried officers, have by their ability and integrity risen to the position of District Magistrates and Sessions Judges.

If, therefore, they are not invested with powers to try European British subjects, they will not, to all intents and purposes, be District Magistrates and Sessions Judges, and will of necessity have to be relegated to backward and out of the way districts, where their abilities will not have full scope, and where, therefore, there will be no avenue to official distinction for them. They will thus be shut out from many of the large, important, healthy and coveted districts. It is asserted that the work of trying European subjects the Native Civilians can delegate to their European Assistants; but the Association beg leave to point out that the delegation of a work to his European subordinate, by a Native Magistrate, which by law he himself cannot take up, is certainly calculated to destroy his prestige and to discredit his office, and this cannot but have an injurious effect upon his position as the chief executive functionary of a district.

Her Imperial Majesty, on her assumption of the Government of India in 1858, issued a proclamation in which it is distinctly laid down that all classes of Her Majesty's subjects, of whatever race or creed, shall be freely admitted to all offices in her service, the duties of which they may be qualified by their education, ability, and integrity to duly discharge. Such being the declared policy of Her Majesty's Government, and the fitness of the Native Civilians being proved to the satisfaction of all, their not being invested with jurisdiction over European subjects cannot be attributed to any other motives than those of race distinctions, which, as Sir Charles Aitchison has pointed out, are invidious and unnecessary.

Under these circumstances we not only give our adhesion to the provisions of the Bill, but would also recommend, as Sir Charles Aitchison has already done, that every first class Magistrate, whether European or Native, Covenanted or Uncovenanted, be appointed a Justice of the Peace at the discretion of the Local Government.

OPINION of the Sri Gobind Singh Sabha, Association Lahore, on the Bill to amend the Code of Criminal Procedure, 1882.

The Bill proposed to amend the Criminal Procedure Code in connexion with the exercise of jurisdiction over the European British subjects has marked a new era in the annals of Indian Legislature.

It has pulled down the thin curtain of race distinction long hung before between the two races (Europeans and Indians) and has, as if, brought the continent of India to lie side by side with the Islands of Great Britain.

Besides being so wonderful, it is also unprecedented in itself, for, in the histories of those nations that have subjugated this country, no such instance can be found whereby both the races (the conquerors and the conquered) might have been placed upon the same level with regard to their Criminal Jurisdiction.

The people of India are therefore greatly indebted to the British Government for this blessing, and are fully alive to understand that the heaviest debt under which they are placed shall never be repaid by them or their posterity. The two illustrious names, Lord Ripon and Sir Charles Aitchison, K.C.S.I., C.I.E., during whose time and by whose efforts such blessings were conferred, and such honour bestowed upon the people of this country, shall never be forgotten from off their minds, but shall always be remembered like sacred names of antiquity.

Although there may be some temporary agitation on the one side, and joy on the other, the ultimate result of this amendment would be to unite them both into one people living in harmony with each other, and looking upon themselves as real brethren descended from the same Anglo-Aryan forefathers, but differing only on account of long separation.

Need of such an amendment is acknowledged on all hands, although one party overlooking the great principle that "equality of both the races is always a good level for the basis of an empire" may, for their own private advantages, produce any argument they can to prove the untimely introduction or unnecessary of the measure.

As the Civil Service is thrown open to the natives, and as they already exercise Criminal Jurisdiction over European British subjects in the presidency towns, there seems no reason to make objection as to extending their powers beyond the limits of those towns.

But supposing the amendment be delayed for some years more, and then all at once may be introduced in its full vigour and power; it would not be so much beneficial then, as now, when its introduction would, through its gradual progress, secure all advantages and produce desired results.

The Seikh national association therefore beg to represent, on the part of the Seikhs in general, that they concur with the object of the Bill and agree with its several sections proposed.

The copy of the Nabha paper, in the original, is herewith appended for the information of your Honour.

OPINION of the Anjuman-i-Mufid-i-Am, Kasúr, on the Criminal Procedure Code Amendment Bill of 1882, dated 28th May 1883.

This *Anjuman* has bestowed full consideration on the Criminal Procedure Code Amendment Bill of 1882, and has carefully looked into the question of amendment, and has considered the grounds advanced for or against the Bill.

The *Anjuman* humbly supports the amendment by which higher classes of Native Magistrates are to be vested with the powers of trying European offenders even outside the Presidency towns, and believes that this amendment is based on sound principles and good grounds.

2. The *Anjuman* would not repeat the common reasons and grounds which have hitherto been advanced, or are likely to be brought forward in support of the Bill, as it believes that the civilized Government, especially the present Government of the Punjab, has sufficient means to know such grounds and reasons. It is evident and clear that the administrative policy of the members of the British Government has always been founded on the principles of equity, justice, liberty and humanity, which are the general principles of every civilized Government.

3. This Society does not repeat the common reasons in support of the Bill on several grounds—

(I.)—These grounds have been duly stated by the originators of the Bill, and the enlightened Government has them in view.

(II.)—Europeans, Eurasians, and Natives are treated with full regard to the age they live in, and to their Native locality.

(III.)—Limited privileges, which it was necessary to reserve for Europeans, owing to the existence of certain circumstances, were so reserved for them for a certain time, but when the time came for their abolition, they were cancelled.

It has been admitted by all Legislators that only that law can be true and just which is compatible with the laws of nature. Hence, it follows, that in the whole world, the law relating to the well-being and prosperity of mankind should be one and the same; and that such a law is the only one which can be depended upon for the true welfare and amelioration of the condition of the people. It should therefore be the first duty of every just Law-giver that he should try to make laws compatible with the rules of nature. Of course, it cannot be denied that while adopting and enforcing this good principle, he should not overlook the circumstances of time and place in framing laws. Local or special laws would certainly somewhat differ from the natural law; yet it is true that till the proper time arrives for adoption of the natural laws,

the local or special laws should be obeyed. The enforcement of local or special laws, which may, at the first view, appear to be somewhat conflicting with the natural law, is but a right means of arriving at the period of adopting the natural law. Of course, it would be a mistake to consider temporary laws as permanent ones, or to confuse those of one kind with those of the other. Hence, it follows, that as the natural laws are useful and worth obedience at all times, local or special laws should be thrown away when the time comes for their abolition. Sometimes people have been misled to consider temporary laws as permanent ones. The *Anjuman* is of opinion that no other error has given rise to so many political and moral evils than this mistaken idea. Evils which encroach on the morals of the people on their ever rejecting natural and permanent laws, are equally demoralizing when temporary laws are considered ever worthy of obedience. The true and natural law, which can be but one and the same for the whole of mankind, is like nourishing food, the use of which is indispensable for healthy people for the development and expansion of their bodily powers; while the temporary laws, which are framed in accordance with the circumstances of time and place, are like sparing diet and medicine (for the indisposed). As the use of substantial food and tonics is injurious to the sick, so the healthy person loses his strength and is rendered infirm by the use of medicines and sparing diet. As it is necessary for the sick to abstain from the use of substantial food, so is it necessary for the healthy person not to live upon sparing diet. Temporary laws are like sparing diet, the use of which should be given up as soon as people become able-bodied. It is true that sparing diet is meant to restore the weak to health, but the use of sparing diet is harmful to the healthy. It has been stated above that temporary laws are the means of arriving at the point when the permanent and natural laws should be adopted, and it is a great political mistake to consider these *means* as the object itself, *i.e.*, the permanent and natural laws.

It is, therefore, the first duty of those versed in law to keep in view the minute difference which exists between the laws of the two kinds; and, while trying to confirm and establish the permanent and natural laws, they should be equally anxious for the repeal of the temporary laws at the proper time.

4. In the opinion of this *Anjuman*, the views advanced in the preceding paragraph entirely apply to the case of the Criminal Procedure Code Amendment Bill, the portion of the Code which it is proposed to amend being of the nature of temporary law.

Hence, when the policy of every civilized Government, and especially of the British Government in India, has been such as is described in the preceding paragraphs, it would be but superfluous to explain and detail the consequences resulting from those principles.

5. It would be useless to explain to Government itself the wise policy of Government, to which allusion has been made above. But it would not be devoid of some advantage to mention that ever since the establishment of the British rule in India, the laws of a temporary nature have always been amended. For example, under the Statute of 1853, all actions arising in India were removed from the jurisdiction of British Courts, then called Mayor's Courts. In 1782, the Governor General allowed special laws of the Natives to continue to govern cases in which Natives were concerned, and ordered that *Maulvis* and *Pandits* should be called to help Courts in expounding the laws in such cases. By the Regulation of 1782, the British Parliament did not only preserve in force the Hindu and Muhammadan laws relating to Wills and Inheritance, but also those relating to Contracts and other such transactions between the natives. By this Regulation their private laws, by which the elders of the families were even authorised to punish offenders charged with murder, were allowed to remain in force, though such punishment might be considered illegal according to the principles of British laws. Many other privileges of this nature were allowed to Natives, but most of them were latterly amended with due discretion, while some still exist. Likewise privileges of a similar nature were conferred by law upon Europeans, which are not unknown to the Historians of Legislation; but these were also reduced in number by degrees. For instance, Native Judges could not at first hear civil suits in which Europeans were concerned, but they were eventually invested with powers to hear such cases by an Act of the Legis-

lature, which Act was styled by the nick name of "*Black Act*" in England. Subsequently, Native Magistrates were invested with powers to try Europeans in criminal cases within the Presidency towns. The question of granting them similar powers outside the Presidency towns is now under discussion. Personal privileges, which have been classed by the *Anjuman* under the head of "temporary laws," were granted to Europeans as well as to natives; but they were reduced in number, or amended, when the time came for their reduction or amendment.

6. The history of the Criminal Procedure Code Amendment Bill displays several grounds which have been adduced by the members of the British Government, and which very strongly support the views expressed in the preceding paragraphs. In the letter sent by Sir Ashley Eden, late Lieutenant-Governor of Bengal, to the address of His Excellency the Viceroy, in support of the present Bill, he clearly stated that the time had now arrived when all the Native members of the Covenanted Civil Service should be freed of all restrictions imposed upon their powers by Chapter XXXIII. of the new Criminal Procedure Code. Many other high officers of the same class have given their opinions in favour of the Bill, from which it appears that the law requiring amendment is of the temporary nature, explained above. Especially the expression, *the time has now arrived*, contained in Sir Ashley's letter, indicates that the law, which it is proposed to amend, is unquestionably of such a nature that its speedy amendment is necessary.

7. What has been said above amounts only to this, that it is unnecessary to give unimportant and summary reasons in support of the Bill, as it is a question which it is a duty of Government to attend to at once without any outside pressure. To make any hesitation in the amendment of this law is to disregard the true and natural law.

8. It is admitted on all hands that every enlightened Government has, for political reasons, to frame special and general and temporary and permanent laws; and the grounds on which they are based, *viz.*, those explained in the above paragraphs, are just and proper. But it would not be expedient for any enlightened and civilised Power to frame two kind of laws for the people living under the same Government, merely for reasons of race distinctions, or for reasons other than those mentioned above.

It is admitted that a distinction should be maintained in laws for reasons of time and place; but the existence of such distinctions, merely for the sake of differences in race and creed, is not only productive of many terrible social dangers, but also gives rise to many political blunders.

The object of the establishment of a government is to secure peace and tranquility to the public, and this object is only realized when the rulers and the ruled are satisfied with each other. The absence of uniformity and impartiality in laws framed by Government causes extreme discontent and engenders differences, which prove disadvantageous to the country, to the people, and to the Government.

It is proved by history, that there is nothing more destructive of the welfare and prosperity of a country than the existence of improper differences between the rulers and the ruled. Progress in all things appertaining to the human kind depends on political tranquility. The pleasures of life cannot be enjoyed without it.

Men, whether they are rulers or the ruled, when living at one place and not observing the duties and obligations of sociality, cannot inherit political tranquility and social pleasures.

Nature has united the two nations (Europeans and Natives) in a social relation in India. As union, unity and true love between the two nations increases, social and even political ties will be rendered stronger. Hence to frame any law from consideration of race distinctions only is to break the social tie; and the absence of uniformity in Imperial laws is a terrible current for the stronghold of social union (between the two nations). There is nothing which so speedily and certainly creates social differences as distinctions in legislative enactments; and when the social ties existing between nations are once broken by such distinctions, their pernicious effect does not disappear for centuries, even if all possible efforts be made to remove that effect. Had not the defunct Hindu and Muhammadan Governments in India committed this terrible mistake, they would not have been reduced to the

miserable plight of non-existence; nor would improper prejudices of caste and religion have so much interfered with the social life of the people. The social pleasures of life are secured by being subject to one and the same laws and by living under the same Government. Hence, when the Criminal Law in its own nature requires to be amended, when strong reasons of justice, humanity and liberty are in favour of the amendment, and when its amendment is at the disposal of a benign and enlightened Government, which prizes the above-mentioned principles more than all other nations, and which was foremost in suppressing slavery in Europe and in introducing Constitutional laws in its realms, under such conditions our only duty is to leave the question on its own merits in the hands of the Government and to respectfully wait for the result.

9. The *Anjuman* believes with great certainty that as the Criminal Procedure Code Amendment Bill requires no arguments to support and to defend it, it is equally safe from the attacks of its opponents. The *Anjuman*, however, cannot but express its regret at the attitude taken by its opponents. The reason of this regret is not only that the opponents of the Bill have differed in opinion on such an important question, but also as such opposition engenders feelings which are destructive to the pleasures of social life in India.

What is taught by example produces a far greater effect than verbal instructions. It is universally admitted by the distinguished statesmen throughout the world, that there is no human *act* or *word* which does not produce unlimited effect. The good and evil acts of mankind are always alive, and produce their result. Of course it is possible that we may not see those results. Even the most insignificant and undistinguished persons cannot say that their words and acts do not produce any effect whatever on any person. In this world no person is independent of social ties, all being fastened in one social chain, and being in need of help from one another. Every person considers that every one else commits more evils and less virtues than himself. The words and acts of our ancestors have had an effect upon us; and so our words and acts would have effect on the coming generations. Man is the fruit of the manipulations of many centuries. For thousands of years past the successive generations have depended for knowledge upon their predecessors, and the present generation would likewise magnetically impart the effect of its words and acts to their successors. The work of no person perishes; indeed it may happen that his body may become dust and fly in the air, and no trace of it may be found; but the evil or good acts would always take their effect. If man may ponder over this deep subject, he would know what a great responsibility devolves upon him. Upon such deliberations he is pleased at his virtuous acts and is terrified at the terrible consequences of evil actions. Mr. Babbage writes to the following effect:—“Every atom in this world retains the effect of man’s virtues and evils; and would always continue to retain this effect. Air is a library in which every man’s words are preserved in a written form.”

All promises which have not been fulfilled, all harsh words which have been uttered, and all the insults which have been pronounced, exist in it. Not only the air, but the earth, sea, and all other things are histories of the actions and feelings of man. The modern sciences clearly show that no movement ever perishes. The science of mechanics proves that there are thousands of witnesses to each act of murder. Whatever movement issues from the body of the murderer at the time when he commits the murder, *i.e.*, the movement of his hand, would ever exist. In short, whatever we do, whatever we speak, whatever we see, and whatever we hear, all these have their effects, which go on spreading for ever. These effects do not only affect ourselves, but affect the whole nation. It is possible, however, that we may not perceive the way in which they affect us. Hence it is greatly necessary to set good examples; to entertain only such ideas as may be useful; to speak only such words as may produce good; and to do only such acts as may afford good examples to others.

10. It has been clearly proved in paragraph 9, and by the words of Mr. Babbage included in it, that the human acts have an imperishable effect which exists for ever, and that practical instruction is a better preceptor than verbal instruction, the former being far superior to the latter. We learn

more by the eye than by the ear. What we see by the eyes has a far greater effect than what we merely hear by the ears, or read in books; for example takes a spontaneous effect on man without his desiring that effect. Sir Peter Lessley, who was a distinguished painter, says: "I do not possibly cast my eyes on bad paints, as by seeing them my pen imperceptibly learns to imitate to draw such paints." In short, man is affected by every sort of company imperceptibly.

The faculty of imitation naturally exists in every person; but the weak, the uneducated, and the children have greater susceptibility for it. A gentleman observes that children are like certain insects, which assume the colour of the tree they climb. Hence, what is learnt in childhood is mostly learnt by observation.

From these remarks it is evident that practical conduct is a great preceptor for human instruction. Although every human being possesses a faculty to imitate, yet the weak and infirm nationality are more apt to imitate the actions of the robust and the strong, as all the principles of sociality are based on this very law. Little children learn the habits, customs, and morals of their parents, but not the parents of their children. In short, the conquered generally imitate the actions of the conquerors. *People follow the creed of their sovereigns* supports this natural principle.

11. The *Anjuman* expresses its regret at the attitude taken by the opponents (Europeans, who belong to the same nationality as the Government) of the Criminal Procedure Code Amendment Bill, for the reason that through their sincere fidelity the Native subjects of the Government consider the authorities as occupying a superior position than their own parents, and that in consequence, like little children, they take pride in imitating their actions.

The people belonging to the conquering nation, irrespective of the fact whether they are, or are not, connected with any departments of Government service, are considered as the ruling race, and their words and actions are not considered distinct from those of Government.

The Criminal Procedure Code Amendment Bill, independently of the fact that it is founded on sound principles, is a Bill introduced by Government into the Legislative Council for consideration. Government itself is considering the expediency of bringing about a uniformity in the laws by removing defects in them. Government itself desires to free the courts of its loyal and able servants from certain disabilities. Under these circumstances, the opposition shown by Europeans against the Bill is in reality an opposition against Government itself, not against the Native subjects of the State.

12. The lesson which the Natives would take from such practical conduct of Europeans is evident; and the terrible social, nay political, dangers, which may be expected to arise from such lessons, are also evident. This Society has, for these considerations, been obliged to express its regret at the attitude taken by certain silly members of the civilised and enlightened European nation.

13. In conclusion, the *Anjuman* sincerely believes that the far-seeing Government of the Punjab, and the enlightened Government of India, and especially His Excellency Lord Ripon, would bestow due consideration upon the views herein expressed; and, while trying with due foresight to evade any possibility of the establishment of such a dangerous example, would assert that the opposition alluded to was not capable of producing any effect whatever, so that the Natives may not even entertain a thought of being affected by it in any way.

LETTER No. 1778, from the Registrar, Chief Court, Punjab, to the Secretary to Government, Punjab, dated Lahore, 6th June 1882.

I AM directed to submit the opinions asked for in your No. 441, dated 12th ultimo.

I have, &c.
(Signed) G. W. RIVAZ,
Registrar, Chief Court.

OPINIONS by the Judges of the Chief Court of the Punjab on the proposal to invest Native Covenanted Civilians with powers to try European British subjects.

I CONCUR in the views of the Lieutenant-Governor of Bengal as expressed in paragraph 3 of his Secretary's letter. A Native Covenanted Civilian who has attained the position of District Magistrate or Sessions Judge should, in my opinion, not be disqualified from exercising the same powers over European British subjects as are exercised by English Covenanted Civilians in the same position. And I would go further and declare that any Native Covenanted Civilian is eligible to be made a Justice of the Peace beyond the limits of the Presidency towns as if he were a European British subject, and when so made is competent to try European British subjects as if he were himself a European British subject.

29th May 1882.

(Signed) J. W. SMYTH,
Judge.

It appears to me rather premature to alter a law which has just been passed on such an important point. I am willing to admit, however, that it would be very anomalous to appoint a Native Covenanted Civilian to the charge of a district, and to deny him jurisdiction over European British subjects. I think that serious practical difficulties might arise if such jurisdiction were not given. I would therefore amend the law to this extent, if it is in contemplation to appoint Natives to the charge of districts.

But I would not go further in the meanwhile. I do not think any practical difficulty is likely to arise for some time to come from not giving Native Sessions Judges powers to pass the high sentences on European British subjects contemplated by Section 449 of the Code of Criminal Procedure.

Cases of the kind are not very common, and I think no practical difficulty will arise from sending them to the nearest Sessions Judge who is qualified under the Act as it now stands. The course recommended by Mr. Justice Smyth is perhaps the logical sequence of the policy now in force regarding the employment of Natives in the Civil Service; but as I have had no practical experience of the result of the working of that policy, I am not yet prepared to say that every logical sequence of that policy must be accepted and acted upon. In a matter of this kind, I think it is well not to forget the saying *festina lente*.

31st May 1882.

(Signed) G. R. ELSMIE,
Judge.

I CONCUR with Mr. Justice Smyth. The question would be one of the fitness of each individual proposed for appointment as Justice of the Peace to be invested with that office, and not one of the fitness of the members of a class, some of whom might be holding charge of a district or acting as a Sessions Judge. I can see no reason why an officer selected for appointment as Sessions Judge, who, in the case of Europeans not being European British subjects or Americans, could on conviction of an offence pass any sentence authorised by law, should not be given the same jurisdiction over European British subjects as other Sessions Judges.

31st May 1882.

(Signed) D. G. BARKLEY,
Judge.

I WOULD certainly alter the law so far as to permit Native Civilians who had risen to the post of District Magistrates or Sessions Judges to exercise all the powers over European British subjects as the European members of the same service, holding the like appointments, now exercise. But I would hesitate to recommend that all Native Civilians should be appointed Justices of the Peace. Selected members might be so appointed, but in the first instance I would confine the appointment to those Native Civilians who had not had less than ten years' service.

6th June 1882.

(Signed) W. H. RATTIGAN,
Judge.

LETTER No. 561, from the Secretary to Financial Commissioners, Punjab, to the Secretary to Government, Punjab, dated Lahore, 9th June 1882.

I AM directed to acknowledge the receipt of your endorsement No 441, dated 12th May, forwarding, for opinion—by Mr. Lyall, a copy of Government of India's No. 5789, dated 28th April, on the question whether jurisdiction over European British subjects should be granted to Native Covenanted Civilian, or at least to such of them as have reached the position of District Magistrate or Sessions Judge.

2. In reply, I am to say that Mr. Lyall considers that it is decidedly necessary and advisable that Native members of the Covenanted Civil Service, who have attained the rank of District Magistrate or Sessions Judge, should be given jurisdiction over European British subjects. It may confidently be expected that they are fit to be entrusted with this power; and there are also strong administrative reasons for giving them such authority.

3. But he does not, on the whole, think it at present advisable to give other Native Covenanted Civilian the power. No administrative necessity for the measure is apparent, and though it is true that their jurisdiction would be contingent on their being appointed Justices of the Peace by some Local Government, yet, looking to the class of men who are likely for some time to come to be appointed in India as Native members of the Covenanted Civil Service, Mr. Lyall thinks that even with this safeguard the change is not desirable.

I have, &c.
(Signed) J. M. DOUIE,
Secretary to Financial Commissioners.

LETTER No. 1487, from the Commissioner and Superintendent, Amritsar Division, to the Secretary to Government, Punjab, dated Dalhousie, 22nd May 1882.

Jurisdiction over European
British subjects.

In reply to your No. 441 of the 12th instant, I have the honour to offer the following remarks.

2. I have never yet met a Native member of the Covenanted Civil Service, but, looking at the question raised in the correspondence forwarded with your letter under reply from a theoretical point of view, I see no reason why a native of India who, by his education and personal qualifications, has been considered a suitable person for appointment to the Covenanted Civil Service, should not be invested with all those magisterial powers with which an English member of the Covenanted Civil Service, holding a similar official position, would be invested. I think it would be creating an invidious distinction between the Native and English members of the Civil Service to proceed on the assumption that whereas the English Covenanted Civilian may be expected, as Magistrates and Judges to impartially try all cases in which the Natives of India are concerned, the Native Covenanted Civilian cannot be expected to impartially try criminal cases in which Englishmen are concerned.

3. The above remarks must, however, be understood to apply to the members of the Covenanted Civil Service only, and not to the Native members of the Uncovenanted Civil Service generally. As far as the Uncovenanted Service of the Punjab is concerned, I do not think the members of it, as a body, are prepared for any alteration of the existing rule. There are some, I think, who, were they invested with jurisdiction over Europeans, would, with the idea of courting popularity, be unduly lenient in the case of Europeans; and there are others who might, I fear, be glad of the opportunity of being harsh and severe where an Englishman was concerned.

I have, &c.
(Signed) C. A. McMAHON,
Colonel and Commissioner.

LETTER No. 1083, from the Commissioner and Superintendent, Jullundur Division, to the Secretary to Government, Punjab, dated Jullundur, 22nd May 1882.

I HAVE the honour to furnish herewith the opinion called for in your endorsement No. 441 of 12th instant, forwarding copy of a letter and its enclosures from the Secretary to Government of India, Home Department, No. 7-589 of 28th April 1882.

2. The question referred for opinion is, whether the restriction placed by the Criminal Procedure Code on the powers of Native members of the Civil Service, whereby they are debarred from exercising the limited jurisdiction over Europeans given to members of their service, who are also European British subjects, should be removed or not.

3. I have carefully considered this question, and I am most distinctly of opinion that the restriction should be removed. I am unable to perceive any sound argument in favour, of its retention while there are many such in favour of its removal. The latter are to be found fully set forth in the letter from the Bengal Government and its enclosures, which form part of the documents received with your endorsement under reply, and I have little to add to them.

4. The maintenance of the distinction in this respect between European and Native members of the Civil Service is invidious, and in time would lead to administrative inconvenience. It is invidious, because it undoubtedly casts a slur on a body of Native gentlemen which has been carefully selected and trained for judicial and administrative duties of a high order, and in effect imputes to its members the want of sufficient moral courage and impartiality to deal with Europeans charged with the pettiest offences for which the maximum punishment is three months' imprisonment or a fine. So stated, the imputation appears to me to have absurdity on the face of it, and, so far as experience of many years in the Presidency towns enables us to judge, it has been shown to be groundless. If educated Native gentlemen there can be safely trusted to try Europeans for petty offences, why should not the same class of men be relied on to exercise similar authority in the mofussil? Then as to administrative inconvenience, it is not difficult to foresee how this might arise, as the employment of Natives in the ranks of the Covenanted Civil Service increases, and they gradually rise to the higher judicial and administrative posts, if the restriction on their powers, which we have been considering, be continued. Instances of such inconvenience, and of the anomalous positions in which Native Covenanted Civilians might be placed by the maintenance of the restriction under discussion, are given in paragraph 3 of the letter from the Bengal Government referred to above.

5. Objections against giving to Native Civilian Judges and Magistrates the same jurisdiction over Europeans as that possessed by their European brethren had their origin in, and are still to some extent kept alive by, *prejudice and pride of race*. But these feelings, which were naturally very strong when we first established ourselves as a conquering race in this country, have been gradually losing much of their force as education has advanced and has diffused among the Natives of this country a knowledge of our language, and, through it, of western arts and civilization, and is slowly promoting a closer intercourse between us Europeans and the better educated classes of the Native community; and the time seems to me to have arrived when we ought to remove from the Statute book a provision like this, which rests only on the weak remains of an old class prejudice, which is likely to be administratively inconvenient, and which places an unreserved stigma on a class of men in our service who have a special claim to fair and generous treatment at our hands.

I have, &c.

(Signed) W. G. DAVIES,
Colonel and Commissioner.

LETTER No. 86 C, from the Commissioner and Superintendent, Pesháwar Division, to the Secretary to Government, Punjab, dated 24th May 1882.

IN reply to No. 441, dated 12th instant, I have the honour to state that I should be in favour of investing any native of the country, who was a Covenanted Civil Servant, and who had also risen to the post of a Magistrate of the district, or Sessions Judge, with the same jurisdiction over European British subjects as are conferred upon European Justices of the Peace.

2. In the face of a Civil officer who is a native of the country being raised to positions of such responsibility and trust in the administration as those involved in the charge of a district and of a Sessions Court, I conceive that no distinction between them and the European members of the same service, with regard to jurisdiction over Europeans, is any longer maintainable.

I have, &c.

(Signed) J. G. CORDREY,
Commissioner.

No. 19.

LETTER from the OFFICIATING SECRETARY to the CHIEF COMMISSIONER OF ASSAM, to the SECRETARY to the GOVERNMENT OF INDIA, Legislative Department.

No. 884
Judicial Department.

SIR,

Shillong, June 19, 1883.

ON receipt of your circular No. 30C., dated 17th March 1883, copies of the Bill to amend the Criminal Procedure Code were forwarded to the judges of the Assam Valley and Sylhet, and to all deputy-commissioners of the Province, with a Circular letter, a copy of which is enclosed. The replies of all officers thus consulted have now been received, and I am desirous to submit copies of them to the Government of India, together with an expression of the Chief Commissioner's opinion regarding the Bill.

2. The Provincial officers are, it will be found, in every case opposed to the Bill, and unanimously recommend its withdrawal. As their replies will no doubt be perused in their entirety, it is not necessary to enter on any elaborate summary of their contents, but it will be convenient to indicate as briefly as possible the nature of their arguments recorded.

(1.) Mr. Ward, Commissioner and Judge of the Assam Valley Districts, would not have opposed the conferment of the powers of justice of the peace on Native covenanted civilians when they rose to the rank of district magistrate or judge, and does not think such a proposal would have excited much opposition at first, though it cannot be adopted now in the present state of public feeling. But he objects to the Bill on the ground that the privilege hitherto enjoyed and highly valued by Europeans should not be taken away without grave reason, whereas no serious inconvenience can be alleged to arise anywhere from the present state of the law, and no inconvenience at all is felt in Assam. He holds that no strong Native feeling exists on the subject, outside the Native official class, and they have no reason to feel slighted; and further he objects to the power given to local governments to appoint, because it would be exercised in very different ways—sparsely here, liberally there.

(2.) Mr. Muspratt, Judge of Sylhet, opposes the Bill on the grounds—(a) that in removing one anomaly it creates another by its circumscribed application to particular classes, and its disqualification of European deputy-magistrates and non-officials; (b) that Europeans, who are the persons most affected, are convinced that they would not get justice from Natives, and their feelings should be respected; (c) that it is inopportune in time, because of the mental disturbance caused by the local self-government scheme, and other important

- measures now pending, and because the European and Native races are not yet amalgamated in feeling or on a par in intelligence.
- (3.) Mr. Johnson, Deputy-Commissioner of Sylhet, objects both to the details of the Bill, *i.e.*, the distinction drawn between covenanted and other classes, and the disqualification of European uncovenanted officers,—and to its principle, on the ground that race-distinctions cannot be ignored and that the conquered cannot love the conquering race. He considers the arguments for and against equally feeble, and that being so, thinks the Bill should be withdrawn.
 - (4.) Mr. Wight, Deputy-Commissioner of Cachar, holds that the powers of a justice of the peace might gracefully be given to covenanted civilians and to any Native who had reached the grade of district magistrate, but that it would be inopportune to do so now; that all Natives, other than these, are unfit by prejudice and want of education to try Europeans; that it would be inexpedient to bring European ladies into the court of a Native magistrate, either as witnesses or otherwise; that Native magistrates do not wish for these powers, and would be afraid to convict Europeans if they had to try them, so that the result of the measure would not tend towards justice; that no administrative difficulty is caused by the present law; and that an anomaly is not necessarily objectionable in India, which swarms with anomalies.
 - (5.) Mr. Driberg, Deputy-Commissioner of Goálpára, thinks the Bill good in principle, but desires its withdrawal on account of the hostility with which it has been greeted.
 - (6.) Mr. Campbell, Deputy-Commissioner of Kámrúp, holds that there are no sufficient grounds for introducing the Bill, which is met by universal hostility; and that the privileges of Europeans should be respected as much as if they were Hindus or Muhammadans, who would resent the withdrawal of any of their present privileges.
 - (7.) Mr. Williams, Deputy-Commissioner of Darrang, objects to the conferment of the powers on classes (b), (c), and (d) of the Bill, but not to their conferment on class (a), at any rate as far as the persons hitherto appointed to that class are concerned. But he thinks the Bill, generally speaking, to be unnecessary and bad, and as it is bitterly opposed, he recommends its withdrawal.
 - (8.) Colonel Lamb, Deputy-Commissioner of Nowgong, thinks the hostile tone of the Native press proves that the class to whom the new powers would be given are not fit to receive them; that Europeans would be overwhelmed with false accusations; and that it does not follow that because Natives have been found able to try Natives, they should be able to try Europeans.
 - (9.) Colonel Campbell, Deputy-Commissioner of Sibságar, holds that a Native magistrate cannot understand the feelings, or in many cases the speech, of Europeans, and that Europeans would be worried by false cases. Race-distinctions cannot be ignored as long as they exist.
 - (10.) Major Peet, Deputy-Commissioner of Lakhimpur, is opposed to the whole line of policy of which the Bill is a part, *i.e.*, the tendency to put the races on an equality by levelling-up or levelling-down; and further holds that, whether bad or good, the Bill should be abandoned on account of the unprecedented excitement it has awakened.
 - (11.) Mr. McCabe, Deputy-Commissioner, Nága Hills, approves only the extension of powers to class (a) of the Bill. He objects to it as unimportant, and states that non-official Europeans feel hostile to Natives, and think all Native magistrates dishonest.
 - (12.) Colonel Clarke, Deputy-Commissioner, Khási and Jaintia Hills, thinks the Bill impolitic and unnecessary. Anomalies must exist in India; and this one can only be remedied some time hence, when the two races have been amalgamated in thought and feeling.
 - (13.) Captain Maxwell, Deputy-Commissioner, Gáro Hills, opposes the Bill on the ground that Englishmen are better capable than Natives

of judging Europeans, and this is a substitution of the worse for the better. He thinks that Europeans will not, after the agitation of the last few months, submit to be tried by Natives.

3. These replies are written with the frankness and independence which the Chief Commissioner anticipated, and which become the character of the gentlemen who have written them. Much as he disagrees with some of the opinions, the Chief Commissioner would not have wished them to be in any respect modified, or to be anything but the genuine expression of the views of the writers; and he is satisfied that the Government of India will share this feeling. Something has been said in the course of the controversy which has raged over the Bill, about the subservience of Government officers to the known wishes of the head of the Government. Mr. Elliott is glad to record his belief that he has not an officer serving under him who, when asked for his opinion on any subject, would not give free and unbiassed expression to it regardless of the views entertained, or supposed to be entertained, by higher authority; and who, if that opinion was overruled and the question decided against him, would not loyally and cheerfully carry out the orders he might receive.

4. I am now to submit the Chief Commissioner's own opinion about the Bill.

5. First, with regard to the details of the Bill. It will be remembered that the proposal originally circulated was to give the power of trying European British subjects to Covenanted Native civilians, either before or when they have attained the position of a district magistrate or judge; and Mr. Elliott, in my reply, recommended that such powers should be given to Native Covenanted Civil Servants on the same terms as to their English compeers, and to Statutory Native civilians when they had attained the rank of district magistrate or judge, but dissuaded the Government from abolishing altogether the race-distinction between European and Native magistrates, as a step for which the time is not yet ripe. The Bill has gone far beyond that recommendation. It would make it possible for Statutory Native civilians to try European British subjects when they have attained the powers of a first-class magistrate, and it would give the same authority to Native assistant-commissioners in non-regulation provinces. (I omit all mention of cantonment magistrates, because there is no probability of a Native cantonment magistrate ever being appointed except as a coadjutor to a European cantonment magistrate; in which case the latter, and not the former, would receive the powers of a justice of the peace.) The Bill further disqualifies European non-officials and Uncovenanted European officials from receiving these powers. Mr. Elliott could not support any of these modifications. In the case of the Statutory Native civilian he does not think that the test of having received the powers of a first-class magistrate is sufficient: these powers are ordinarily given after a comparatively short term of service, and an officer's worth hardly begins to be known till it is seen how he exercises them; a much longer and severer test should be applied before powers are given, the misuse of which would cause so serious a scandal and would discredit the class to which such an officer belongs; and Mr. Elliott would certainly postpone their conferment till the local government, by appointing the civilian to the post of district magistrate or judge, had asserted its complete confidence in his capacity, honesty, and discretion. Again, with regard to Native assistant-commissioners, there are none in Assam; but from his acquaintance with some of those in Berar and Mysore, the Chief Commissioner has come to the conclusion that the same rule should apply to them as to the Statutory civilians, and that they should not receive powers to try European British subjects unless the Government has a sufficiently high opinion of them to appoint them deputy-commissioners of districts. Lastly, with regard to the disqualification of European extra-assistants and deputy-magistrates, Mr. Elliott would regret to see such a change. There are five such officers in this Province who have powers of a justice of the peace, and they have exercised the powers with credit and discretion. It would be an administrative inconvenience if, for the sake of a scientific classification, such officers were debarred in future from exercising these powers.

6. If therefore, in May 1882 the Chief Commissioner had had this Bill before him, he would have been obliged to dissent from the details to which exception has been taken; he would have recommended the omission from the Statement of Objects and Reasons of the passage about removing at once and completely every judicial disqualification which is based merely on race-distinctions; but he would have advised that, if the power of trying European British subjects were confined to Natives being—

(a) Covenanted civilians invested with the powers of a first-class magistrate,

(b) Statutory civilians appointed to the district magistrates or judges, the Bill so amended should pass into law. Many things have happened since May 1882, and in the face of those events it does not necessarily follow that the same advice should be given now which would have been given then.

7. It will be in the recollection of the Government of India that the Chief Commissioner, in May 1882, drew attention to the race antagonism and to the prejudice which is still felt by non-official Europeans against Native magistrates, but expressed his belief that the prejudice was dying out and that the measure then under discussion would not excite any great opposition. He admits now that he was mistaken in this prognostication, and that the feelings of mutual distrust appear to be as active as ever. Whether the storm of hostility with which the Bill has been met is entirely due to the Bill itself, or whether any such hostility would have been awakened had the Bill been confined to the provisions previously circulated to local governments, is open to question. But whatever may have been the origin of the excitement, there can be little doubt that the opposition now embraces all and every provision of the Bill, and that no compromise, such as a return to the proposals originally circulated, would satisfy the European public or lead them to look on the Bill with favour.

8. The question which the Government of India have to decide is, how much weight should be attributed to this opposition, and how far they would be justified in compelling one section of the community to submit to an enactment which they vehemently dislike, for the sake of improving the administration or raising the status of another section. And in deciding this question, they must take into consideration not only the arguments for and against the Bill, but also the weight and volume of the opposition and its possible effects on the course of Government.

9. As to the arguments against the Bill, Mr. Elliott holds that they are for the most part based on an inaccurate appreciation of the facts, and are tinged by prejudice rather than by reason. He repudiates altogether the assertion that Natives of the class who would be selected for such office are unfit, by reason of the difference of race, to understand the motives or arguments of an accused person of European birth, or that there is the slightest reasonable probability of their misusing their power through malice. The whole history of the working of the civil courts in Assam seems to him a refutation of such arguments. These courts have largely to deal with the interests and quarrels of European tea-planters and landowners; they are resorted to with no apparent disinclination; the results of appeals from their decisions show that the Native judges of these courts exercise their functions, and hold the balance between European and Native, with discretion and justice. No doubt a civil court has not the same powers over the person as a criminal court: it cannot order immediate arrest: the consequences of a miscarriage of justice in it are not so serious to the individual as they would be in a criminal court. But still the powers of a civil court are considerable: it can mulct a man of his property; it can brand him as untruthful or dishonest; it can commit him for contempt of court or imprison him for insolvency. If, then, there are no complaints about the conduct of these civil courts, but the comparatively inferior Native officials who preside over them are admittedly efficient and independent, it is not reasonable to suppose that the few men who might be selected from these on account of their special ability and high character would, when sitting in a criminal court, misconduct themselves in cases where Europeans are concerned. It seems to the Chief Commissioner that the matters which come up for decision in a civil court, such as questions of trading custom, of bonds, of loans, and of contracts are, as a rule, more intricate, and require more knowledge of

the habits and feelings of the litigant class, than the questions which are raised in a criminal trial; and therefore the whole series of objections which are based on the supposed inferior ability of Native magistrates to try such cases seem to Mr. Elliott to be wholly mistaken. He does not accept as probable the idea that criminal courts would be flooded with false charges, when civil courts are not so flooded. Indeed, he has no hesitation in adopting the opinion expressed by Mr. Johnson, that the decisions of an able and experienced Native magistrate would probably be much more sound and accurate than those of a young English civilian during the first few years of his service in the country.

10. But though the arguments against the Bill seem weak, there remains the weight and volume of the opposition to it, and that appears to Mr. Elliott a much more serious matter. There is probably no Province in India in which it is as serious as in Assam. There are perhaps more European settlers in Bengal (outside of Calcutta) than in Assam, but they bear a smaller proportion to the mass of the population, and their interests, important as they are, are rivalled or overshadowed by other interests. In Assam they form a larger number, relatively to the population, than in any other part of India, and their interest in the country is more influential and important than the interest of any other class. They are the one intelligent, energetic, improving class in the Province; they are the natural allies and assistants of the district officers; and any event which should set them in determined opposition to the Government would be in a high degree disastrous. The deputy-commissioner who should be on bad terms with his tea-planters would probably deserve to be condemned for want of tact and managing power, and would find himself hampered at every turn, in court and out of court. Already since this Bill was introduced, the Chief Commissioner has painfully felt the estrangement it has produced, and the delay it has caused in carrying out useful reforms and improvements which were in progress. He thinks, therefore, that it would require a very strong case to justify any enactment which should exarcebate and perpetuate the alienation which at present exists.

11. No such case can, in his opinion, be made out for the Bill under discussion. The argument from administrative inconvenience is allowed to be a weak one: it does not exist in Assam at all, and nowhere can it become serious for several years. The Chief Commissioner's view is that the Bill, if modified as he has suggested, is a good one, and one which it was right to introduce; but that it is not one of much practical importance, and events have shown that it had better be withdrawn. The step was a step in advance, but not a great one; and it is not worth while to take it, when we see the injurious effects which it has produced, and is likely to go on producing, in other unexpected directions.

12. This recommendation to abandon the Bill is not made without regret; for the necessity of making any concession to overpowering hostility—any retreat in a course of policy which has hitherto been a continuous and successful advance—is a regrettable incident. But the Chief Commissioner feels that much larger issues are at stake than the success or failure of this particular Bill. The most painful part, to him, in all this bitter ebullition of feeling, has been the conviction that it has not been evoked by the Bill alone, but is the expression of a determined hostility on the part of non-official Europeans to the general scheme of raising the Natives of India to a political equality with ourselves, and to a fair share in the government of the country. He fears that it is the principle of local self-government that is being struck at under the guise of the "Ilbert Bill:" and if that is so, it is a cause for poignant regret that any provisions in the Bill should have been so drawn as to awaken opposition to the principle on which the morality of our tenure of the government of India is based. Mr. Elliott believes he is in harmony with the feelings of most of his district officers when he declares that, in recommending the abandonment of this Bill, he does not mean that the Government of India should in the smallest degree retreat from the general lines of policy on which the Bill was based. No one can hold more emphatically than he that our *raison d'être* in India rests on the gradual elevation of the Natives of the country to share its government with us, and to take a larger and still larger share in that government as time goes on.

He has no sympathy with the argument about the conquering and the conquered race: no permanent government can possibly rest on such a basis; if the conquest of India was guided by Providence for the good of the country, it can only have been in order that we might introduce a system of government which shall by degrees obliterate the memories of the conquest. The only postulate is that reforms should be gradual and tentative, and that nothing should be done which, on a general survey of the whole, seems likely to produce more harm than good. It is Mr. Elliott's opinion that the measure under discussion will on the whole produce more harm than good, and he advises its withdrawal. He has seen, during his service in India, many measures of reform taken, and a general advance all along the line; in every case these measures have been successful, and the worst thing that could be said of them is that they might have been stronger or have been taken earlier. It need be no cause of shame to the Government of India to admit that one step in advance has been proposed too soon, and should be receded from; nor need it be taken as an indication of any change in the general policy, or any relaxation of the desire to govern the country through and for the people of the country, as soon as it can be safely and conveniently done.

I have, &c.

(Signed) C. J. LYALL,

Officiating Secretary to the Chief Commissioner of Assam.

Enclosures referred to in the preceding Letter.

LETTER from the ASSISTANT SECRETARY to the CHIEF COMMISSIONER of ASSAM, to JUDGES, Assam Valley Districts and Sylhet, and all DEPUTY COMMISSIONERS, Assam.

Circular No. 21.

Judicial Department.

SIR,

Dated Shillong, the 5th April 1883.

I AM desired to forward a copy of the Bill to amend the Criminal Procedure Code, and to ask for an expression of your opinion on its provisions. As the Bill has been and is vehemently opposed by the influential body of non-official Europeans in the country, it is desirable that you should take especial care to state your views with precision, in order that the Government may thoroughly understand on what grounds you do, or do not, recommend that they should persevere with the Bill.

2. The following are the principal lines of thought which may be followed on this subject: you may hold that the Bill is a good Bill, and that the opposition to it is either so mistaken or so factitious that it will subside when sound reason resumes its sway; or you may hold that the Bill is bad in principle and should not be adopted, even if it were not unpopular; or you may hold that the Bill, though sound in principle, is not of much importance, and that it would be unwise to proceed with it in the face of the genuine hostility which it has elicited. And, besides these main lines of thought, you may think it necessary to criticise the details of the Bill, and the classes to which it is proposed to extend the powers of a justice of the peace.

3. These suggestions are made, not to influence the expression of your opinion, which should be as frank and independent as possible, but to indicate the chief points to which your reply should be directed. It is necessary that your answer should be received by the end of May, as the Chief Commissioner is directed to submit the provincial report by the end of June.

I have, &c.

(Signed) W. C. MACPHERSON,

Assistant Secretary to the Chief Commissioner of Assam.

LETTER from the COMMISSIONER, Assam Valley Districts, to SECRETARY to CHIEF COMMISSIONER, Assam.—(No. 829G., dated 26th May 1883).

I HAVE the honour to reply to your circular letter No. 21, dated the 5th April 1883, in which my opinion is called for upon the proposed amendment of the Criminal Procedure Code.

2. It is difficult to say anything on this subject which has not been said before by others whose opinions are entitled to more weight than any that I can give; but, as I am decidedly opposed to the Bill, I think I am bound to state fully the ground upon which my opposition is based.

3. The effect of the proposed amendment, if carried, may be stated thus:—By the law as it now stands, no Mufassal magistrate or judge, who is not himself a European British subject, can be appointed a justice of the peace; and no one but a justice of the peace can try a European British subject on a criminal charge. In other words, no one but a European British subject can try a European British subject on a criminal charge. The Bill proposes—(1) to give local governments the power, if they think fit, to appoint any covenanted civilian, assistant commissioner, or cantonment magistrate, who has first class magistrate's powers, to be a justice of the peace without any regard to their nationality; (2) to make all sessions judges and district magistrates *ex officio* justices of the peace, whether European British subjects or not, and without regard to their fitness to try European British subjects.

All Native sessions judges, therefore, and Native district magistrates *ex officio*, as well as all covenanted civilians, assistant commissioners, and cantonment magistrates, who have first-class powers, and whom the local governments think fit to appoint justices of the peace, will have the following powers conferred upon them with respect to the trial of European British subjects, over whom hitherto they have exercised no jurisdiction whatever:—

(a) If a judge, the accused may be sentenced to one year's imprisonment or fine, or both.

(b) If a district magistrate or a Mufassal magistrate of the first class, the accused can be sentenced to three months' imprisonment or Rs. 1,000 fine, or both.

4. It is scarcely necessary for me to refer to the strong European public feeling which has been excited all over India, and in this province in particular, against this proposed change in the law; and, although I by no means adopt the view that, in India, Government measures should be made subservient to public feeling, I think it must be admitted that the European public have, in the present instance, some ground for alarm. I would recommend, therefore, that, in deference to the strong and not altogether unreasonable feeling that exists against the Bill, it should not be proceeded with, at any rate in its present shape, unless it can be shown that strong administrative grounds exist for doing so.

5. With reference to the question of administrative necessity as a ground for proceeding with the Bill, I do not think it can be said that any such necessity at present exists in any part of India. It certainly does not exist in this province. Whatever inconveniences may arise 20 years hence may be considered when they do arise; but I do not think we need legislate now for possible inconveniences that may arise in the next generation.

The sole question to be considered now should be whether, having regard to public feeling on the subject, any such serious inconvenience exists at present, or is likely to arise in the next four or five years, from the present state of the law as would justify the legislature in altering the law. I think it cannot be disputed that this question must be answered in the negative. In the first place, it will be a long time before any appreciable number of Natives will have risen to be district magistrates or sessions judges; secondly, I do not anticipate any appreciable inconvenience even when the maximum proportion of one-sixth of the Civil Service is composed of Natives; for, long before that maximum is reached, it must be borne in mind that our communications throughout India will be considerably improved, and thus the inconveniences to parties and witnesses arising out of transfers of cases from one district to another will be considerably lessened. It is, moreover, very

seldom that a Mufassal judge is called upon to try a European (I have had only one such case in this division during the seven years I have been here); and, with regard to district magistrates, it can always be arranged that, where the district magistrate is a Native, the joint magistrate or senior assistant commissioners at the head-quarters of the district shall be a European British subject and a justice of the peace with first-class powers. In cases, therefore, against European British subjects with which a magistrate is competent to deal, there is no reason to anticipate that any inconvenience whatever to witnesses and parties will ever arise by maintaining the law as it now stands. Thus the inconveniences, which I understand it is one of the objects of the Bill to remove, seem to me to be inappreciable, and do not, I think, afford sufficient ground for proceeding with the Bill in face of the very strong public feeling which has been excited against it.

6. In speaking of public feeling, I refer, of course, solely to European public feeling. Native feeling I leave altogether out of consideration, because I do not think that in a matter of this kind it has any claim upon our consideration. The mass of the people certainly have no feeling whatever on the subject, one way or the other; and, with regard to the upper non-official class of Natives, I do not think there is any ground for supposing that they ever wanted a change in the law until the present Bill was published. Even now they do not pretend that the Bill will do them any good. Many respectable Natives are against the proposed change; others only support it, because they think it affords another manifestation of the present benevolent policy of Government in granting them extended powers of local self-government. These latter have also taken up the view (which I think has rather been suggested to them by the discussions that have taken place on the Bill than by any original feelings entertained by themselves on the subject) that the privilege which the European now enjoys of being tried by his own peers is invidious and casts a stigma on the character and qualifications of Native magistrates.

7. This brings me to the feelings of the Native official class upon the subject. As regards these, I must say that, if, before the Bill was published, they ever felt (which I very much doubt) the invidiousness of the distinction which prevents their trying Europeans, I cannot understand the feeling. I can conceive nothing more natural than that a European should prefer to be tried by one of his own race. Rightly or wrongly, he distrusts the Native magistrate, whether we call the latter a covenanted civilian, or by any other name. He has had practically no experience of the covenanted Native civilian, still less of the statutory civilian (a Native cantonment magistrate has, I understand, never been seen); and, as regards the Native assistant commissioners, it cannot, I think, be said that they are entitled as a class to any special confidence on the part of the European public, although no one will deny that there are many able officers to be found belonging to that class. Seeing, then, what European public feeling is in the matter, I cannot understand the desire of any Native magistrate or judge which prompts him to move the Government to disregard and crush that feeling. I cannot conceive any Native of education and right feeling, or possessed of any pride in his constitution, claiming the right to try a man who, with or without reason, does not expect justice from him. Indeed, I refuse to believe for a moment that any such Native feels in the least degree slighted at the thought that he can only try a man of his own race. It would be as reasonable to suppose that I feel slighted because the Criminal Procedure Code gives a judge of my experience, with power to sentence a Native to death subject to confirmation by the High Court, and to transportation without such confirmation, power only to sentence a European British subject to one year's rigorous imprisonment and a fine. No doubt, there may be a few Native magistrates whose vanity prompts them to think they should be empowered to try Europeans. The feeling, however, is a bad one; and it is not towards gratifying the vanity of the few that legislation should be directed.

Then, again, I have not yet found any answer to the argument that, in the matter now under discussion, it is not the feelings of the judge that we should consult but those of the people whom it is proposed to place under his jurisdiction. I see that one Honourable Member in the Council of His Excellency the Governor-General, replying to this argument, said that he saw no reason why that which did not hurt the feelings of Europeans in

Presidency-towns should hurt them in the Mufassal; but I would submit that, whether we appreciate or not the reasons on which public feeling is based, we must, when legislating for the good of the people, recognise the fact that the feeling does exist.

8. I do not lose sight of the fact that, except in the case of judges and district magistrates whom the Bill declares to be *ex officio* fit to try Europeans, it is not proposed to give jurisdiction over Europeans to any but selected Native magistrates. The Bill, however, gives unlimited discretion to local governments to select; and I do not think that public confidence in a magistrate is likely to be enhanced by the fact that a local government has selected him; and any Bill which renders it possible for a European to be subjected to the criminal jurisdiction of a Native in whom the European public have no confidence is, I think, wrong in principle, and will, I fear, if passed into law, be not only productive of much bad feeling between Europeans and Natives all over India, but will probably also lead to many scandalous scenes in courts presided over by Native magistrates. It must also be remembered that a local government is a very variable abstraction. It possesses no very fixed ideas as to the fitness of persons or things. The head of a local government to-day may think that its powers of selection under this Bill ought to be rarely exercised; his successor to-morrow will think that they ought to be rarely withheld. In short, the action of local governments under the special powers conferred upon them by the Bill will, I am afraid, vary very much according to the individual views of the governor, lieutenant-governor, or chief commissioner upon the general question now under discussion. The practical effect of the Bill, therefore, if passed, will simply be to shift the responsibility of deciding the general question from the shoulders of the Government of India to those of the local governments. This, I think, the European public are entitled to object to. The subject under discussion is of sufficient importance, I think, to require that the Imperial legislature shall settle it one way or the other, and not leave it to less responsible shoulders. Moreover, the decision of the general question is one which should affect all European British subjects in India alike, and should not be left to be decided by local governments in such a way that the Europeans of one province may find themselves deprived of privileges of which those in a neighbouring province are in full enjoyment.

9. It is unnecessary to go into the question as to whether the European can claim the *right* to be tried by his own peers; it is sufficient to find that he has enjoyed the privilege of being so tried for many years and in many countries, and that he values that privilege highly. We, as rulers, cannot fail to appreciate this feeling, nor can we disregard it, even though we may think that it is based more on sentiment than on reason; for we know full well that many of our existing institutions continue to exist mainly by reason of the sentiment which attaches to them. This privilege, then, which the European values so highly, should not, I think, be taken away from him on any other ground than that of administrative necessity. When the matter is looked at in this light, it seems to me that the stigma theory has nothing to support it.

10. Upon the question as to whether Native civilians and assistant commissioners can ever be trusted with the powers it is proposed to give them, I do not wish to give any decided opinion. I should be sorry to say that none are to be trusted, and, so long as there are any fit to exercise these powers, it can of course be said that local governments may very well be trusted to find out these men. I have myself never yet seen a Native covenanted civilian who has been to England, and I have only come across one statutory civilian, without seeing any of his work. I am scarcely, therefore, in a position to judge of the powers and qualifications of a Native civilian. I would deprecate, however, any *a priori* theory that supposes that a Native who has been to England and competed for the Civil Service is, by reason of this fact alone, competent to try a European. Much more than this is required before any Native can enter into our feelings and motives, and appreciate or even understand our family and social relations. That he does not understand these things no Native would, I venture to think, attempt to deny; and I think the European may well ask, without being necessarily accused of stigmatizing the Native character or raising invidious distinctions, "Is any man fit to try me, whose entire habits of life, thoughts, feelings,

“ opinions, are so entirely distinct from my own, and who may therefore frequently be led to pronounce a wrong judgment upon me by reason of his want of sympathy with me, or a proper understanding of the real merits of the case against me?” Of course, if the validity of this argument is admitted with respect to the covenanted civilian proper, it applies with greater force to the statutory civilian and the Native assistant commissioner, who have never visited England at all.

11. No doubt, it may be said that the present Bill can do no harm if the number of cases in which a European will be tried by a Native will, as is anticipated, be so small; but I think legislative action should have something stronger to support it than the mere allegation that it is harmless. Moreover, I think the Bill, if carried into law, will do much harm; for, as already stated, it will, I have no doubt, produce an amount of bad feeling between Natives and Europeans, especially among the lower classes, which it will take many years to eradicate. Nor do I think the fact that the punishing powers of judges and magistrates over Europeans convicted by them of a criminal offence are small affords any ground for giving those powers. This, of course, is merely another form of the argument that the Bill may be supported on the ground that it can do little or no harm.

12. A good deal has been written and said to the effect that, if the Bill is carried, European capital and enterprise will be driven out of the country, or, at any rate, will receive a severe check. I do not believe this for a moment, for the simple reason that cases will, I am sure, whatever happens to this Bill, be exceedingly rare in which a Native will ever sit in judgment upon a European; and European enterprise and capital are not so easily frightened from a country where such large profits are to be found as in India.

13. In conclusion, I would only add that, had the Bill confined itself to carrying out what Mr. Gupta originally proposed, namely, that covenanted civilians (excluding the statutory civilian) who rose to the position of a district judge or chief magistrate of a district (deputy commissioner as he is here called) should have *ex officio* powers to try Europeans, I do not think any one would have seriously objected; and, were it not that the present Bill has excited so much bad feeling, I should have been inclined to propose that it be modified to meet Mr. Gupta's proposal, and nothing more; but, in view of the present state of public feeling, and seeing what little real necessity there is for such a modified Bill, I should prefer seeing the present Bill withdrawn altogether without anything being offered in substitution for it. As an alternative proposal, however, I would suggest that the privilege which the European now enjoys of being tried by his own peers be continued to him, but that he be allowed to waive the privilege and submit himself to the jurisdiction of any Native magistrate of the first class, whether he be a covenanted civilian or assistant commissioner, extra-assistant commissioner, honorary magistrate, or deputy or even sub-deputy magistrate. I am quite certain that, if a Bill of this kind were passed, many Europeans would, for their own convenience, waive their privilege in many cases, and assert them only in cases of difficulty or importance. It would be well also, if, at the same time, Europeans were, by an amendment of the code, allowed to submit themselves to the jurisdiction of European judges and magistrates in cases which, under the present law, these latter cannot now try. It is a serious thing for a European planter in Assam, and also for witnesses here, to feel that in a certain class of cases they must all, whether the accused or complainant wishes it or not, be sent up for trial and examination to the High Court at Calcutta, because the judge has no power to pass a sentence exceeding one year's imprisonment and fine.

14. I notice that the Bill excludes extra-assistant commissioners, the deputy magistrates of Bengal, and honorary magistrates, and this, too, whether they be European or Native, from being selected by local governments as fit to try Europeans. I do not understand why they should be excluded. If it be held that there must be some assistant commissioners with first class magisterial powers who are fit for selection to try Europeans, the same, I think, may certainly be said of any class of magistrates who have first class powers.

15. I enclose the opinion of the only district officer who, up to date, has reported on the Bill. The deputy commissioner of Darrang has, I understand, reported to you direct.

(Signed) W. E. WARD.

LETTER from the JUDGE, Silhat, to SECRETARY to CHIEF COMMISSIONER, Assam. (No. 172A., dated 4th May 1883.)

I HAVE the honour to acknowledge receipt of Circular No. 21. of 5th ultimo, giving cover to a copy of the Bill to amend the Criminal Procedure Code.

2. I beg to tender my sincere thanks to the Chief Commissioner for permitting me to express my opinions on the said Bill frankly and independently.

3.—(1) I think the Bill should never have been drawn up in its present form, as it is very circumscribed in its application, and is totally opposed to the views given in the second ground of Objects and Reasons.

4.—(2.) I think the Bill was a mistake, as it is proposed to remove an anomaly and to confer new powers on some 10 Government officials, without any consideration being given to the feelings of the thousands who will be affected by the amended law.

5.—(3.) I hold that the Bill has been introduced at a most inopportune time. The minds of the people are in a very unsettled state in consequence of the introduction of local self-government throughout India, by the proposed law of Landlord and Tenant in Bengal, and by the proposed Land Regulation in Assam.

6.—(4.) The proper time has not arrived for introducing a Bill to do away with race-distinctions. Very startling changes are proposed before the masses of the Native population are sufficiently advanced to understand that the object of the Bill was to raise the status of the Native civilians, and not to lower the status of all European officials, whether covenanted or uncovenanted.

7. With reference to my first ground of objection, I notice that the Bill proposes to give jurisdiction over European subjects to—(a) members of the Covenanted Civil Service, (b) members of the Native Civil Service, (c) assistant commissioners, and (d) cantonment magistrates. The Bill thus excludes all the subordinate magistrates, whether European British subjects or Asiatics, as though they were not only inferior in position but also in judicial acumen.

8. It would, I consider, be most unjust to debar European subordinate magistrates altogether from holding jurisdiction over European British subjects. Numbers of those officers have for many years held such powers, and no one has ever charged them with acting unjustly when their fellow-countrymen have been tried in their Courts.

9. It may not be intended to deprive those already entrusted with the powers of justices of the peace; but why, I would ask, should not those that come after them (if fitted) be invested with similar powers? They must surely be quite as experienced, able, and trustworthy as the members of classes (b), (c), and (d).

10. If it is the desire of the Government of India to remove from the Code at once, and completely, every judicial disqualification which is based on race-distinctions, why should a new anomaly be created, and the powers already held by a large number of officers be taken away, in order to give more powers to a very small number not holding similar powers outside the Presidency towns?

11. It appears to me that the proposed change in the law would, in a very short time, create many instances of administrative inconvenience, and injured parties would have to travel to the sadar stations to prosecute petty charges that might, as hitherto, be tried by fully qualified European deputy magistrates at the sub-divisions.

12. I propose, in the next place, to consider why (2) the Bill was a mistake.

13. In the Statement of Objects and Reasons it is stated—"It was thought anomalous that Natives of India should be deemed incompetent to exercise jurisdiction over European British subjects outside the Presidency towns."

14. It appears to me that the greatest anomaly was in the granting of such powers to Natives of India in the Presidency towns. I do not remember to have heard that the appointment of non-Europeans in Calcutta was ever considered a success. No member of the Council in the debate on the proposed Bill named any one of them as a proof that the powers granted to Natives in Calcutta should be extended to the Mufassal.

15. The Government of India calls the proposed change the removal of every judicial disqualification based merely on race-distinctions, and asserts that it is an anomaly that Natives of India competent to discharge the highest judicial duties should be incompetent to be justices of the peace. Why, then, would the Government give the powers to Natives holding certain posts, and debar others of the same race who have long sat in the courts as magistrates, and have earned the confidence of the governors of provinces by their integrity and upright conduct?

16. When the English obtained possession of each portion of the Indian Empire, the courts of the country were found to be so venal and corrupt that it was found imperatively necessary to legislate—that European British subjects should only be tried by their fellow-countrymen. They have continued to try them. Why, then, should that power now be withheld from them unless they are members of classes (a), (c), and (d)?

17. I consider that the distinction raised in the selection of officers to be empowered to try Europeans is a great mistake.

18. Mr. Elliot states in the circular that the proposed Bill has been, and is, vehemently opposed by the influential body of non-official Europeans in the country.

19. I maintain that they have just grounds for their opposition to the Bill, and their assertions clearly prove that the time is not yet arrived for the proposed change.

20. European British subjects are convinced that they should not be tried by Natives of India, who do not understand their manners, customs, and feelings, who do not entertain any respect for their own women, and who would prefer to have their women steeped in ignorance.

21. It cannot possibly cast any slur on those Native gentlemen who have won high positions in the Covenanted and Uncovenanted Services that they should not be asked or compelled to try charges brought against European British subjects. I have been a member of the Bengal Civil Service for 33 years, and I never heard such an assertion made before I read the speech of the Honourable Durgá Charn Láhá.

22. I can point a stranger anomaly than the one that has led to the introduction of the present Bill, but I do not consider that it imposes any disparagement or casts any slur on me as a judicial officer. The present deputy-commissioner of Cachar is under 11 years' service, and had not even arrived in the country when I was appointed sessions judge at Cachar; yet he is empowered, under section 30, Criminal Procedure Code, to sit alone to try any offence not punishable with death, while I have to try similar cases with the assistance of assessors.

23. Europeans are truly afraid of being tried in the courts of Natives, whose fellow-countrymen daily prove that their chief weapon of offence against a rival or an enemy is to bring against him a false charge backed up by perjured witnesses. Both Hindús and Muhammadans institute false charges, and it is not confined to the poor and ignorant of those two races.

24. In Assam, 2,336 false cases were detected in 1880, and 2,105 in 1881, or nearly 10 per cent. of the cases instituted in each year, and over 25 per cent. of the charges brought were rejected. Of persons brought to trial, the numbers acquitted in 1880 and 1881 were respectively 4,862 and 4,956.

25. How, I would ask, can the Government expect that any European (man or woman) would consent to be tried by a court when the prosecutor, witnesses, investigating officer, magistrate, mukhtars, and vakils are all aliens to him or her in race, feelings, and religion, &c.?

26. It is very unfortunate that the Government of India did not consult some of the officials who are daily hearing cases, and who could have under-

stood both sides of the question, and would not have treated it as a matter solely of State policy and convenience.

27. This is the first time that the feelings of any class of officials have been consulted. It is a great mistake to pander to such sensitiveness. Government should rather have considered the feelings and antipathies of those who would be affected by the proposed Bill.

28. I cannot but feel that the determined opinion of Government, stated in their Objects and Reasons, has given rise to much of the strong language used in discussing the proposed changes in the law.

29. I next proceed to consider whether the Bill should have been introduced at the present time, and what effect it is likely to have on the Native races in Lower Bengal and Assam.

30. In 1882, the Government of India decided that local self-government should be started throughout the length and breadth of India.

31. It is unnecessary for me to specify what great changes were thus introduced, and how it has given importance to many things, many places, and many people. The majority of the people formerly took no interest in the matter of roads, education, &c.

32. Government are now desirous that the masses should think for themselves on the subject of self-government, and they have been called on to assist in the election of the members of the committees. The laws for carrying out self-government were only under discussion when this amendment of the criminal procedure was notified.

33. The Code of Criminal Procedure was passed in March last year, and came into force on the 1st of January of the present year. The introduction in February of a radical change in selecting the officers to be appointed to try European British subjects by an amending Bill must arouse feelings in the Natives of India that the Code contained a very glaring error, which should not have occurred while the Code was before the Council of India. They would naturally inquire what changes were proposed; and what must they think of the announcement that Government had determined at once, and completely, to remove from the Code every judicial disqualification based merely on race-distinctions?

34. The only conclusion they could arrive at would be this. Government have held incorrect views, and have assigned a higher status to European magistrates and judges than they were entitled to hold, and that henceforth those officials were to be reduced to the same level as the Native magistrates and judges.

35. The Natives of India will learn that the proposed amendments disqualify all uncovenanted European magistrates, and place in their stead certain Native officials about whose fitness or abilities very few of them know anything.

36. What, then, can the masses think of the proposed changes and the hurry with which an amending Bill has been introduced before the Council?

37. This amending Bill, to my mind, strikes a heavy blow at the foundation of the structure of the criminal courts in India, and lowers all magistrates and judges in the eyes of the masses. No longer will they respect those officials. The administration of justice will be carried on under considerable difficulties (signs of these are already cropping up), and the hitherto smooth working of the Government officials in their intercourse with the masses of the people will be seriously affected.

38. The people do not feel respect for the civil courts. They pay heavily for the privilege of using them, and they consider that those courts have been created for their convenience, to enable them to recover their rights, and in many cases to injure their enemies.

39. But the criminal courts have been revered, as they are backed up by enormous powers, namely, by the police, and by the terrors of jail and of transportation across the black waters. It is impossible at the present time to convince a villager that he will get the same justice before a fellow-countryman as before a "saheb;" and, until the mass of the people feel assured they will get equal justice before Asiatic and European magistrates, the time has not arrived to introduce the proposed changes into the Code of Criminal Procedure.

40. In the present year, a Bill affecting landlords and tenants in Bengal has been discussed in the Council. It has given rise to very conflicting opinions, and the landlords are as deeply moved by that Bill as the Europeans by this amending Bill. Silhat is convulsed by the proposed land regulation for Assam.

41. Heretofore the Government of India have felt their way, and have introduced changes in the law singly and cautiously. But now no less than three laws making vital changes are being started at one time in Lower Bengal and also in Assam.

42. I maintain that the present was a most inopportune time for the introduction of a law that must bring to the surface race-antipathies that were slumbering, but which might have ceased to exist in process of time.

43. In conclusion, I would most respectfully urge that this amending Bill should be withdrawn, and I sincerely trust that the hostility which it has elicited may be calmed down, and friendly feelings between all classes and races be restored.

(Signed) H. MUSPRATT.

LETTER from the DEPUTY COMMISSIONER, Silhat, to SECRETARY to CHIEF COMMISSIONER, Assam, (No. 1005, dated 28th April, 1883).

I HAD not intended expressing an opinion on the subject of the Criminal Procedure Amendment Bill, with reference to your Judicial Department Circular No. 21, dated the 5th April 1883. I thought I might leave the discussion of the measure to my successor; and I felt that my opinion, to be of use, should have been submitted a year ago. But, having learned that the Chief Commissioner wishes me to leave my opinion behind me, I submit a note on the subject. I am inclined to think the Bill wrong in principle. But I am sure that the time has not yet arrived for such a measure.

(Signed) H. L. JOHNSON.

NOTE by DEPUTY COMMISSIONER, Silhat.

THE advocates of the measure do not state what its principle is. They refer to some principle, but they do not give its shape. Mr. Gupta talks of an invidious race-distinction; but race-distinctions are not necessarily invidious. A man cannot help being a Bengali; and, if they were, you could not on that account abolish them, and therefore you must recognise them. Nobody has suggested (or *had* suggested till this proposal was brought forward) that Mr. Gupta is unfit to exercise the powers in question. Lord Ripon speaks of the Bill following necessarily from the admission of Natives to the Civil Service, but we admitted Natives to the Civil Service on the same principle that we opened it to competition, because we hate artificial privileges and monopolies. If we had suspected we were depriving the English race of any race-privilege by it, we should not have taken this step.

It cannot be that the advocates of the Bill disapprove of all recognition of status in our laws. (Status is but another word for distinction of race.) In this country, status still rules supreme, and our efforts to supersede it by contact have not been very successful. To this day we recognise the status of *Mainpuris* even in our jails.

I sympathise with those who say that we came here by an unfortunate accident; that it is doubtful, if we do any good, that we should go as soon as we can. I think we should frame all our measures with a view to going. I therefore disapprove of the admission to high posts by competition (which appears to be a part of the principle of the Bill), because that system brings Bengalis to the front; and I am doubtful if they are the race who are destined to succeed us in the government of this great Indian Empire.

Then it is not suggested that we can settle down and amalgamate with the peoples of India—become a force leavening the whole mass, as we have done in Ireland. If we could do this, then our special status as a superior race

is an obstacle, and should be swept away as wrong in principle. If we cannot do this, then we can only remain here as a superior and conquering race. It is on this fact that I hold that, opportunity offering, we should go.

It is hardly possible to discuss the principle of a measure the advocates of which are apparently not clear about it themselves—veil it in such phrases as “the more liberal view.” But the opponents of the Bill have a clear and recognised principle of very respectable and ancient lineage; indeed, of scriptural authority. *Civis Romanus sum* has been in all ages a cry to conjure with, and in time and place is no doubt a highly admirable principle. Since the struggle for life and survival of the fittest theory came to be applied to politics, the part which race-distinction plays in the world is better appreciated scientifically, but before the days of science, race was revered instinctively. When the Englishman says “I will not be tried by a Bengali,” he has history, science, even the apostle Paul, on his side. And, in the case before us, his assertion of his race-superiority is specially justified by the fact that the Bengali belongs to a race he has conquered. His assertion of his race in the face of Egyptians, Chinese, Japanese, &c., looks like mere pride, but in the case of the races of India it is much more.

He has a feeling that a conquered race must necessarily dislike the conquering race. His experience of the Irish, whom he has admitted to equal laws, even to representation in his supreme Council, confirms the feeling. His experience in India, where he sees Natives carefully excluded from place and influence in the army, and even in the police, confirms the feeling. But he should at the same time remember that he submits to be tried by Irishmen, who are overtly more disloyal than the Bengalis, and probably hate their conquerors more. I make another objection to the principle of the Bill. It recognises a distinction between the Covenanted Civil Servants and other persons. Now, whatever objection there may be to the recognition by the law of a difference of status which actually exists is natural, is indeed the most prominent fact in Indian history, past and present. The recognition for the first time in the codes of a wholly artificial distinction is simply, from a liberal point of view, detestable. This objection is so obvious, that I am surprised that a Government calling itself liberal should have proposed such a measure. I believe I am right in saying that the unrepealed laws and regulations of all the presidencies may be searched through, and no case will be found in which members of the Covenanted Service are invested with judicial powers as such members. A proposal to abolish the Civil Service would not surprise me; a proposal to endow it, for the first time in the history of our rule, with special magisterial powers is in the highest degree retrograde.

Supposing these objections to the principle of the Bill to have been disposed of, I have only to consider whether the present is a convenient time for divesting ourselves of our status as conquerors. I use a general phrase, because, if one condition of that status is admitted to be anomalous, other conditions are so too. Thus, if we submit to be tried by Natives of the country, we cannot refuse to allow Natives of the country to form volunteer corps; we can no longer reserve certain of the superior grades of officers in the army to the conquering race, and so on. Much has been made of the argument that Europeans have already submitted to be tried by Natives; that judges of High Courts and Presidency magistrates may try Europeans. One writer, an ex-Lieutenant-Governor and Member of Parliament, says, “How very small the change of practice is. As judges of the High Court, Natives have unlimited criminal jurisdiction; every day Native magistrates try Europeans in the Presidency towns.” But I am informed that judges of the High Courts do not, as a matter of fact, hold criminal sessions; that in the last 100 years there has never been a Native magistrate in the European quarter of Calcutta, and only in six or seven years in the Native quarter. I am informed that at Bombay the Native magistrates are Parsis, to whom, I presume, the objection that they belong to a conquered race or races does not apply. The strength of this argument depends on the extent to which Europeans have submitted to be tried by Natives. And the answer to it is obvious. The anomaly between town and country law may be most simply removed by withdrawing from High Court judges and Presidency magistrates the obnoxious powers. This argument that he has submitted himself is peculiarly offensive to the

Englishman. He had allowed a Native to be appointed as magistrate of the Northern Division of Calcutta, and other Natives to be appointed High Court judges, in the belief that these measures did not practically injure his status. European cases are few in the Northern Division, and he thought the Native judge would not be deputed to hold criminal sessions. He had no intention whatever of surrendering his status. When, therefore, his, as he thinks, unfortunate carelessness or good nature in these two cases is quoted as a reason for going further, he feels that he has been "jockeyed" as it were, out of his rights.

Then it has been said the present system is inconvenient. One instance is quoted from Dháká. But no inconvenience actually occurred—some one admitted it might occur. I know Dháká very well, and I state that the inconvenience mentioned is wholly imaginary. You may make the whole district staff Native, and you will find plenty of European gentlemen ready to do a petty magistrate's duties for nothing. Another instance is quoted from Bombay, but here the inconvenience is stated to have occurred in connexion with a railway which, I am told, has never been commenced. In some respects, I think the change would prove inconvenient. The privilege of trial by his own race follows the Englishman into the Native States of India. Englishmen take service under Natives in Mysore, Haidarábád and other Native States, and, though there are occasional difficulties, the reversal of the natural relation is not so injurious as might be expected. The reason probably is, that the Englishman retains his privilege of trial by his own race. If he had not that privilege, the Native States would probably not obtain his services, or would have to pay a higher rate for them. So I think that, unless Europeans retain this privilege, the appointment of Natives to districts where there are many European settlers (and they are daily increasing in number) will be practically impossible.

Against the Bill, in its practical application, arguments have been brought forward, not much better than those above quoted in its favour. I am quite sure that the average experienced deputy magistrate would be as good a judge in the case of a European accused as he is in the case of a Native. I am not sure about a young man just out from England. I think I would allow him time to sow his wild oats before giving him much authority. But, speaking generally, Natives make as good, or better, magistrates than Europeans.

The only argument against the Bill to which I attach any importance is that it stigmatises a very worthy and highly useful body of men—Native magistrates, not members of the Covenanted Civil Service—as unfit to exercise certain powers. The blot can easily be remedied by giving powers indiscriminately, and dropping the wholly illiberal distinction between covenanted and uncovenanted magistrates.

It seems to me that the advocates of the Bill have failed most signally in making out a case, and that the opponents of the Bill have failed equally signally. It seems to me to be a question of sentiment on both sides.

The advocates of the Bill think it looks well for the conqueror to submit himself to the conquered; it is a magnanimous thing to do. The opponents, I believe, honestly think that a Native is an abominable creature, not at all fit to rule over them.

In the absence of any conclusive or strong argument, one way or the other, we should, I think, follow the liberal course of consulting the persons interested in the matter. They have given an almost unanimous vote against the measure: that they disapprove of it is, of course, itself a strong argument against it. It never does to legislate against, without, above, or beyond the people for whose benefit you legislate, as we have so often proved in our administration of India.

When the word "Native" is no longer used by the Europeans; when the Native no longer describes his conquerors as the "*sahib log*"; when there is no longer a natural distinction between Natives and their foreign conquerors—then we may expunge all recognition of that distinction from the Statute-book. At present, the measure is premature. Indeed, I personally think that, as long as we remain here, the necessity for such a measure will not—indeed cannot—arise, but then I hope for a speedy departure. If the Government of India is determined to take a step in the direction indicated,

I would suggest throwing all cantonment magistracies open to Natives. There is much analogy between cantonments and Presidency towns. The European element is so strong that they cannot indulge in the fears (as I think fantastic) for which his isolated position gives the European in the Mufassal some excuse. Then we have the precedent of the Presidency towns. Let us now extend the principle established in the Presidency towns to cantonments, hill stations, and other places where Europeans are most predominant.

(Signed) H. L. JOHNSON.

LETTER from the DEPUTY COMMISSIONER, Silhat, to SECRETARY to CHIEF COMMISSIONER, Assam,—(No. 1381, dated 11th May, 1883).

UNDER my letter No. 1005, dated 28th April, 1883, I forwarded some observations on the proposed Criminal Procedure Amendment Bill. The proposal to make all non-official Europeans incapable of service as justices of the peace escaped my notice. As the Chief Commissioner is aware, I would, if possible, get all petty magisterial work done for nothing. There seems no good reason for imposing this special disability on European British subjects. It is anomalous that a man who holds and exercises such powers in England should be disabled by changing his domicile to India.

(Signed) H. L. JOHNSON.

LETTER from the OFFICIATING DEPUTY COMMISSIONER, Cachar, to SECRETARY to CHIEF COMMISSIONER, Assam,—(No. 840J., dated 31st May 1883).

IN reply to your Circular No. 21, dated 5th April, 1883, calling for an expression of opinion on the provisions of the Bill to amend the Criminal Procedure Code, I have the honour to submit the following report.

In my humble opinion, the provisions of the Bill as they stand are altogether bad. The result of section 1 would be to disqualify the future European British magistrates, even of proved competence and fitness, from being appointed justices of the peace, unless such magistrates were either cantonment magistrates, covenanted civil servants or assistant commissioners in the non-regulation Provinces. Now, there are scores of magistrates, not belonging to any of these classes, who have been appointed justices of the peace, and who have fulfilled the duties of their office with credit. Why should such be debarred in future from being made justices of the peace? The Punjab Government has recorded its opinion "that the powers and "jurisdiction to be exercised by judicial officers should depend entirely upon "personal fitness." Again, the North-western Provinces Government desire to appoint Native members who have proved their fitness. If, then, Europeans not belonging to any of the four classes above-mentioned be personally fit, why should they not be appointed justices of the peace?

The second objection I bring against section 1 is that it enables local governments to appoint certain Natives as justices of the peace, and these, if first class magistrates, will have the power to try Europeans.

I would consider this objection under different heads.

I fully admit that it would be a graceful concession to allow Natives belonging to the Covenanted Civil Service to become justices of the peace and to try Europeans. I use the word "concession" advisedly. To talk of their "claim" to such power is to misuse words. Claims they can have none. When they entered the service, they did so being well aware of the fact that, under the law, they could not try Europeans. Moreover, it appears to me to be ridiculous for a subject race to talk of their "claim" to try members of the conquering race. To talk of "justice" in demanding the concession is, in my view, equally ridiculous. "Justice" is obtained by the due and impartial administration of the existing laws of the land. What would be considered "justice" in one country is not considered so in another country, simply because the standard whereby to test the "justice" of any act differs in the two countries. If it is meant that the present laws are not justly and impartially administered by Europeans, then a case of injustice arises, and it becomes essential that other persons should be appointed who will administer the laws without partiality. But, before such a statement can be accepted,

it is necessary to adduce proof, and up to date such proof has not been adduced. I am unable to believe that the Government is of opinion that the law is not justly administered by Europeans. Still less can I believe that the view of the Government is that the law will be administered with more impartiality by Natives than by Europeans. Hence all talk of "claim" and "justice" on the subject is, in my opinion, unwarrantable.

I say it would, under ordinary circumstances, be a graceful concession to extend the jurisdiction of Covenanted Native Civil Servants over Europeans; but, in the face of the violent opposition raised against such concession, I think it would be politically expedient to conclude that the time for making it had not yet arrived. Had the experiment been confined to this much only, I doubt whether any storm of opposition would have arisen. Had it arisen, I think the Government should have withdrawn the Bill, however much it lamented the prejudices of its European subjects. I draw a distinction between covenanted Native civil servants and other Natives, because, in the case of the former, they have lived in Europe; they have mixed with Europeans; they have learnt the peculiarities and idiosyncracies of English people (at least to some extent); they have necessarily become acquainted in a way with their methods of action and habits of thought; they are partially competent to draw deductions from their behaviour; and they are not so apt to draw false conclusions from actions not understood. There is in every way a wide difference between them and those Natives "saturated with caste and religious prejudices, ignorant of European modes of thought and feeling." Of, course, I assume that Government has no intention of appointing out-casted Hindus exclusively in the Civil Service. On the contrary, those who will be appointed under the Statute 33 Vict., cap. 3, will belong to the highest families, and so, no doubt, will be Native assistant commissioners in the non-regulation provinces. Such gentlemen will be strict Hindus, and will be bound by their religious code. Now, are such persons competent to try Europeans, or to understand their actions? I do not believe in the use of abstract assertions, and so I will briefly give a few concrete instances. Take a charge of adultery. In this country a chaste woman is she who is supposed never to behold the face of any man but her husband and relatives. She dare not go out. To speak to, or be seen with, a stranger would involve the most fearful penalties. I have too often heard Native opinion—I mean the opinions of the educated Natives—on this subject. They are absolutely incapable of believing that the freedom of women is compatible with chastity. They attribute the grossest irregularities to all ladies, Native or European, who mix frequently and openly with the other sex. The published accounts of two Bengalís who visited England (and they may be assumed to be educated) prove conclusively what the judgment of Natives is about them. The most innocent action would be misconstrued by an orthodox Hindu, who would discover vice where the most perfect innocence existed. Any case in which there arises a question connected, however remotely, with the relations between the two sexes would be completely beyond the power and ability of an orthodox Hindu to comprehend. Thus all questions of offences against marriage could not be tried by Natives.

Again, take the case of assault under provocation. Can a Native born and bred in the *zanána*, who has not mixed with Europeans, understand what is, and what is not, provocation? I have heard in open court the most respectable persons tell each other "they lie." In Native society "you lie" is freely interchanged. At *pancháyats* I have heard it myself. The most foul abuse is occasionally interchanged by persons who ought to know better, yet there is apparently no resentment. There certainly is never an interchange of blows, nor the thought of any. Can a Hindu realise the grave provocation which the word "lie" raises to a European? Would he hold such a remark as any justification for a blow?

Again, take the case of mischief. A cow is a sacred animal to the orthodox Hindus, and it is as grievous a sin (if not more so) to take the life of a cow as to take the life of one's parents. According to the religious books, each hair of a cow is the seat of a god. So he who kills a cow commits a similar offence to killing a god. Suppose a European to kill a cow and to be tried by an orthodox Bráhmaṇ. Is the latter qualified to pass sentence? Will he not be influenced in his estimate of the accused's guilt

by his own religious belief? Why, the Sástrás actually enjoin on all good Hindus the absolute necessity of committing *perjury* in order to save the life of a cow. Are men of this stamp competent to try Europeans? I say most certainly not. We know that the Lieutenant-Governor of Bengal himself challenges "most strongly the competence of Native magistrates to try Europeans." I think, therefore, I may be excused for holding the same opinion, and for showing on what grounds I challenge their competence. Those Hindus who have shown their contempt for the monstrous absurdities above mentioned, who have so far shown their superiority above caste-prejudices to cross the *Kálápáni* and receive an English education, should be treated on a different footing. The extension of the proposed jurisdiction to them might be defended, but certainly not to the others. What would be the results? A constant heart-burning. Suppose cases of the sort above described to be laid before a Native, and suppose the magistrate of the district to be a European, would not an accused European apply at once for a transfer? The law permits the district magistrate to transfer cases. Why should he not do so? If he did so, he would incur odium among the Natives, and would be reflecting on the Native magistrate. If he did not do so, he would incur greater odium among his own people, and moreover would be acting probably against the dictates of his own judgment. Most certainly in any case where European ladies were concerned (as witnesses or otherwise), the magistrate of the district would invariably transfer the case to his own file. This would be a wanton reflection on the Native magistrate, and yet a necessity. The indignity of a European lady being taken before a Native magistrate, surrounded by Native *ámlá* and Native police, would be simply an intolerable scandal. Why the wife of the commonest *ámlá* in the court could only be produced in a *palkí* or behind a *pardá*. What respect would the Natives have for such a lady, or for her husband, the latter perhaps a high official? The mere knowledge that it was possible to drag a European lady before the criminal courts would be an incentive for any evilly disposed person to bribe a servant to bring a false charge. I would strongly deprecate a law that rendered the occurrence of so grave a scandal possible. False charges are notoriously very common in India, and are very easily got up.

I would point out that it is incorrect to talk of the disqualifications of the Natives to connexion with this question of jurisdiction. The right of Englishmen to be tried by men of their own race and colour is a personal privilege (if the term privilege may be used). It is a possession of no recent date: no reflection is cast upon the Natives at all. If the Natives were Dutch, it would be the same thing. It is absolutely incorrect to talk of the disqualification of the Natives as the leading principle. It is nothing of the sort. An Englishman has a much cherished right of long standing. If this right (privilege be it) interfere with the exercise of certain powers by the Natives, it is an accident. But let the correct order of things be maintained. It is not the case that Natives were ever disqualified directly, and then certain privileges were given to Europeans. It is the accidental fact that the privilege has been enjoyed so long by Europeans that the Natives are indirectly disqualified.

Is it seriously meant that the Natives who practice polygamy, who treat their wives as caged birds, kept in the dark chiefly for the creation of sons, to perform the necessary shraddh or funeral ceremonies for the repose of souls, who immolate infants of tender age to marriage, who compel infant widows to remain widows till death—are such competent to try European men and women? Is no account to be taken of the wide gap which lies between the feelings of Europeans and of Natives, of the caste-prejudices of the latter, of the low estimate they have of women?

No; I maintain that the Natives are not competent to try Europeans, and therefore section 1 of the Bill is bad altogether in principle. Why should the judge's feelings be taken into consideration? Surely the person to consult is the accused.

The present orders are that Native civil servants to be appointed under the Statute 33 Vict., cap. 3, shall be ordinarily appointed only to office in that Province where they were first appointed. Does not this recognise the fact that men ought to be tried by men of their own Province, who can best

understand their actions? Is not this, too, the foundation of section 275, Criminal Procedure Code? This section enacts that "In a trial by jury before the Court of Session of a person not being a European or an American, a majority of the jury shall, if he so desire it, consist of persons neither European nor American." That is to say, the ruling race of the country are declared to be incompetent to form a majority of the jury to try Native. Why? Because the Natives can understand a Native better. If, then, to try a Native the majority of the jury cannot consist of Europeans, why should a Native alone be allowed to try a European? It is a right he never possessed, and therefore it has not been taken away from him; and I know of no law of nature or God which makes the right to try Europeans inherent in the Native. If the right is conferred, it is a concession, and a concession only. But this question was never raised by the Natives themselves; there was never any clamour for such a Bill; there was no movement of any kind made in favour of such a Bill until the present one was introduced. It was founded on the sentimental grievance of an individual. It is not desired by the mass of Natives.

If Government proposed to pay a monthly salary of Rs. 100 to every English speaking Bábú, no doubt there would be thousands in favour of such a Bill; or if Government proposed that any European convicted of assaulting a Native should be sent to jail without the option of a fine, no doubt thousands would welcome such a Bill. Where the Natives are to be benefited at the expense of the European by any particular Bill, it is not surprising that they should clamour for it.

When Government abolished *sati* and prohibited hook-swinging, and when it legalised widow remarriages, there was an outcry among the educated Natives; but what did this prove? Not that the mass of the people were with them, for they were not; so it is in this case. I maintain that the general public never wanted such a Bill. If a boon (so considered) is thrown at a man, it can hardly be expected that he will not accept it, even though he never dreamt of it. The law as it stands is the same for *all*. The privilege of administering it against a European is confined to Europeans. But I object to the Bill on other grounds. If the privileges of the ruling race be thus cast aside, what will happen to the numerous personal laws of the Hindus and Muhammadans? Will they not be threatened with abolition? Can Government confine itself to abolishing privileges of Europeans only? The turn of the Natives must come, and the present Bill will be used as a weapon against them. What opposition will they be able to offer when it is proposed to abolish their anomalies? And this brings me to the consideration of the grounds on which this Bill is brought forward. As far as I can make out, they are three—(1) to abolish an anomaly; (2) to abolish the invidiousness of the disqualification (so-called) of Natives; (3) to remove administrative difficulties. These I would discuss one by one, taking them in inverse order.

The Provinces in which the largest number of Europeans live are undoubtedly Bengal and Assam. Yet what do these two Governments, which are the most intimately concerned with the Bill, say? His Honour the Lieutenant-Governor of Bengal said in Council—"There is practically and really no administrative difficulty in connexion with this matter." The Chief Commissioner of Assam appears to be of the same opinion, for he objected to any extensive conferment of jurisdiction over Europeans upon Native judicial officers at present. He advocated the claims only of Native *Covenanted* Civil Servants, and of Natives who may become district magistrates or sessions judges. Now, as there is not a single Native in Assam belonging to either category, the conclusion is most obvious, namely, that in Assam there is no administrative difficulty which requires to be overcome. Moreover, the sole ground of the Chief Commissioner's advocacy was "the desire to make progress in the direction of *equality* between Native Covenanted Civil Servants and their British-born brothers." Every reasonable person will, I think, admit the necessity of this. It is inevitable in the march of progress that every year should see Europeans and Natives brought more and more on terms of absolute equality. But the Assam Government never advocated the Bill on the ground that it would remove administrative difficulties, for these do not exist.

In Burma, too, where there are many Europeans, there is no question of administrative difficulty. Thus, one of the chief grounds of the Bill is absolutely non-existent. Moreover, do the provisions of the Bill create "equality." No; they take away the privilege of becoming a justice of the peace from fit and competent Europeans in the Uncovenanted Service (unless they happen to be cantonment magistrates or assistant commissioners in non-regulation provinces), and confer it on certain Natives. The double process, therefore, of levelling down and levelling up is performed at the same time, with the difference that the former is practised on the European, the latter on the Native. If my views be correct, there would seem to have been an error made by Mr. Quinton in Council, when he said that Burma and Assam advocated the Bill on the ground of "administrative" convenience.

Next, as to the invidiousness of the disqualification of Natives. I have before pointed out that it is not a direct disqualification of Natives so much as a special privilege of Europeans. I would here take the liberty of commenting on certain views expressed in Council.

Mr. Quinton said: "It is difficult to find any intelligible reason why an officer of sufficient judicial ability to be appointed a presidency magistrate should, when promoted or even transferred to a district beyond the Presidency, forfeit powers which he had been found to exercise in a satisfactory manner."

Again the North-western Government wrote:—"If a Native civilian as magistrate of the district may be trusted to exercise the powers of a justice of the peace, he should retain them when, his charge of a district being temporary, he reverts to a subordinate post.".....I would venture to point out that, in non-regulation Provinces, the deputy commissioner has very extensive powers; he can imprison up to seven years. If the same officer is transferred to a regulation district, he at once forfeits his powers; nor can the Government of India itself make him retain them.

Under section 30 of the Code, the North-Western Provinces and the Bengal regulation districts are excluded. Now, in Assam, deputy commissioners have for years been exercising the powers conferred under section 34. I am a covenanted civilian myself, and have exercised these powers. Nevertheless when I am "promoted or transferred" to a Bengal regulation district, I shall at once forfeit my powers; nor will the Government itself be able to continue them on me. Is not this an exactly similar case? Have Europeans ever objected to this provision of the law? Does any one consider it a reflection on his fitness? Again, when a joint magistrate acts as judge, he has certain powers. When he reverts to his jointship, does he retain them? It is not his *fitness* that ceases, but it his cessation to hold a certain office; so it is with a presidency magistrate. Certain powers are attached to the office; any one holding the office enjoys them. On ceasing to hold it, he forfeits them, though his fitness remains the same. With all respect, therefore, to the high authorities quoted, I am unable to see what force there is in their argument.

Lastly, I would refer to the third objection, namely, that the privilege at present enjoyed by Europeans is an anomaly. The numerous personal laws and privileges of the Hindus and Muhammadans are surely greater anomalies. Is it not an anomaly that Native men should be exempted from personal appearance in a civil court, a privilege not enjoyed by the very highest European official or nobleman? Is it not an anomaly that, as mentioned by Sir Louis Jackson, a *vākīl* who had practised 30 years in the civil court should on his retirement be exempted from personal appearance in such courts? Is it not an anomaly that Native women should be so exempt when not the highest English European lady in the land possesses that privilege? Is it not an anomaly that a court should be debarred from seeing the demeanour of a witness, considering the express provisions of the law (section 363 of the Code), which enacts that the judge or magistrate *shall* record such remarks as he thinks material respecting the demeanour of a witness?

Is it not an anomaly that the highest European cannot hold land in the same *province* in which he is serving, whereas a Native is permitted to hold land in the same *district* in which he is serving, even though he may be a settlement

officer or deputy collector? Is it not an anomaly that infants should be permitted to marry? Is it not worse than an anomaly—nay, almost a crime—that a girl, if she is not under 10 years of age, may be sacrificed to marriage? Was not a child killed in this way in Silhat, and the husband was acquitted, because it could not be proved whether the child was just under 10 or not? Is not this barbarity sanctioned by section 375 of the Penal Code, while at the same time for persons not husbands it is criminal to let to hire, &c., a girl under 16 (*vide* sections 372–373, Indian Penal Code)?

Is it not an anomaly that favour should be shown to pure Natives at the Roorkee College to the prejudice of Eurasians, who should combine in themselves the united privileges of the Europeans and the Natives from whom they originally sprung?

Is it not an anomaly that the commonest Native, should he happen to be a sepoy, should enjoy the privilege of being tried by a first class magistrate, whereas the highest and most respectable Native in the land is liable to be tried by a third class magistrate?

But it would be an endless job to record all the anomalies existing; and, if common Natives, who are sepoys, are to be so tenderly treated and the best trial secured to them, is it unreasonable that Europeans should make the same claims and be privileged to get the best trial, namely, that by a person of their own race and colour and habits of thought and feeling?

But what object is to be gained by removing one anomaly and leaving numberless others? Europeans will still have special courts: they will still be liable to diminish punishments by courts other than high courts; they will still be able to appeal from a fine of one anna, although a Native, punished on summary trial, will not be able to appeal from a sentence of three months' rigorous imprisonment.

Next, as to section 2. There is no doubt a great deal to be said in favour of allowing sessions judges and district magistrates who are Natives to try Europeans. I am myself of opinion that there would be no serious objection to this. But here again I would say that it would be a pure "concession," reasonable enough no doubt; still I doubt whether the step is actually *necessary* at the present moment. We have the authority of His Honour the Lieutenant-Governor of Bengal for saying that, "in all his experience " in India, the present is unmistakeably the strongest, most united and " unanimous expression of popular discontent that he has ever witnessed." In the face of the deep and universal current of feeling disclosed by the agitation, I think it would be most inexpedient to grant even this concession just now, although I admit it is justifiable in more ways than one. What is the counterbalancing advantage contemplated? None. Will any reasonable person contend that the alteration in the law will, in the remotest conceivable degree, improve the moral, social, or material prosperity of the Natives? We know on the highest authority that the moral, intellectual, and political advance of the Natives depends upon the existence of harmonious relations between the two races. Is the success of the local self-government scheme to be imperilled by the creation of race antagonism? Are the endless evils already caused, and those which may be caused in the future, counter-balanced by the removal of a sentimental grievance? Surely it must be evident to all what mischief has already been caused by the mere prospect of a change in the law.

I cannot conclude without making one point clear, as I do not desire to be misunderstood. What I wish to bring into prominent notice is that Natives are, from circumstances over which they have no control, incompetent and unfit to try Europeans in all cases (of course, in many cases there may be no difficulty of the sort). I do not for a moment insinuate that the Natives would *wilfully* pass improper judgments. They may be as just and as impartial as Europeans, but their unfitness is caused by their ignorance of European manners and customs. Natives may be as trustworthy and as honourable as Europeans, but it is no fault of theirs that they cannot understand Europeans. The fact, however, is undeniable, and this difficulty cannot be got over. And another point for consideration is this. The conferment of jurisdiction over Europeans on Natives will be a doubtful boon even for the latter. If a Native had to try a European of high standing,

would he not be nervously anxious to acquit? The orders of magistrates are upset by judges, and those of judges by high courts, while those of the last are upset by the Privy Council. If a Native knew that his conviction of a European might possibly be upset on appeal, would he not be gravely apprehensive of being charged with a race feeling, and of convicting on this account an innocent European? If the high court or judge were to upset such a conviction, would there not be a fearful outcry that an innocent European had been sacrificed to the animosity of the Natives? In the notorious Meres' case, would a Native, in the face of the conflicting testimony, have ventured to convict? In truth, whenever the conviction of a European by a Native was upset, on each occasion there would arise ill-feeling and animosity; and a few such cases occurring would be enough to produce grave political disturbances. It is the knowledge of these facts which would render a Native nervous, and so prevent him from convicting a European whom another European would not hesitate to punish. The European judge would know that *he* was not exposed to evil insinuation; his action (if mistaken) would not at least, be misconstrued. It is on these grounds also, I think, that the proposed jurisdiction of the Natives is objectionable.

In conclusion, I beg to apologise for any expression in this letter which may be deemed unbecoming or intemperate. The question at issue is one of the gravest and deepest political significance, and it may be that I have written in stronger terms than are necessary. But the instructions in your circular are that the "expression of my opinion should be as frank and as independent as possible." I have accordingly written without any reserve whatever.

(Signed) J. K. WIGHT.

LETTER from the OFFICIATING DEPUTY COMMISSIONER, Goálpára to COMMISSIONER, Assam Valley Districts.—(No. 344, dated 24th April 1883).

I HAVE the honour to acknowledge receipt of Mr. Macpherson's Circular No. 21 of the 5th April 1883, Judicial Department, forwarding, for an expression of opinion, a copy of the Bill to amend the Criminal Procedure Code.

2. It is a difficult matter to say anything for or against the Bill without going over old ground, and reiterating what has been written over and over again in the various newspapers, both by its supporters and its opponents.

3. I have no objection to urge to the principle of the Bill. I think it is a good one, and is the natural consequence of Natives of India receiving a high class education and obtaining high offices under the State. Before long, Native members of the Civil Service must in the ordinary course become magistrates of districts; and, as such they must be entrusted with powers to try all classes of cases and all classes of offenders. It would be invidious to hold that a native district magistrate should not try certain persons, but that his assistant should have that power, because he is a European British subject. I do not think that the former would be more liable to commit an error of judgment than the latter in ordinary cases that come before magistrates. I know that all this has been said before, but, to my mind, it is the one and only argument in favour of the Bill. I allow it is a strong one too; but, in the face of the hostility it has elicited, I do not think the Government should proceed with the Bill. At any rate, if the Bill is to be read again, I think it should be limited to Native civil servants who are or may be district magistrates or sessions judges, and should not be extended to Native civil servants generally or the other persons mentioned in paragraph 1. I suggest this in case it is proposed to press the Bill; but, as I have said, I would not advise this course on account of its unpopularity.

4. I enclose copy of report from Mr. Metcalfe, the Sub-divisional officer of Goálpára.

(Signed) J. J. S. DRIBERG.

LETTER from the SUB-DIVISIONAL OFFICER, Goálpára to DEPUTY-COMMISSIONER, Goálpára.—(No. 25, dated 13th April, 1883).

WITH reference to your memorandum No. 289 of the 9th instant, asking me for my opinion on the Criminal Procedure Amendment Bill, I have the honour to say that I consider the Bill a good Bill in principle, but I do not think it ought to be adopted in face of the hostility it has excited between the European and the Native. Race-feeling is running high at present, and it might possibly affect a Native magistrate's mind in his judicial dealing with Europeans.

(Signed) H. H. METCALFE.

LETTER from the DEPUTY-COMMISSIONER, Kamrup, to SECRETARY to CHIEF COMMISSIONER, Assam.—(No. 191J., dated 22nd May 1883.)

I HAVE the honour to acknowledge the receipt of your Circular No. 21, dated 5th April 1883, Judicial Department, forwarding for an expression of opinion a copy of the Bill for the amendment of the Criminal Procedure Code.

2. The Statement of Objects and Reasons appended to the Bill fails to show any adequate reason for its introduction. After reciting that it was thought anomalous that Natives of India admitted to the Covenanted Service and held competent to discharge the highest judicial duties, should be deemed incompetent to be justices of the peace, the Statement proceeds to declare the intention of the Government of India to remove the present bar upon the investment of Native magistrates in the interior with power over European British subjects, and abolish completely every disqualification which is based on race-distinction. The Statement does not show that any administrative necessity has arisen calling for so wide a change in the law. There has been no failure or miscarriage of justice demanding a remedy, neither was the measure sought for by any section of the Native community. The proposal emanated from a single Native civilian, and the disqualification which he proposed to do away with is one of which he was fully cognisant when he entered the service.

The importance of this disqualification has been greatly exaggerated, for, arising, as it does, from social reasons, it throws no slight whatever on the persons disqualified.

3. In declaring its intention to place European British subjects under the jurisdiction of Natives in the Mufassal, the Government of India appears to have overlooked the fact that it could only do so by depriving them of a right which they have long enjoyed; and I may venture to say that, if such a right had been enjoyed by Muhammadans or Hindus, so important a declaration of spoliation on the part of the State would have been likely to cause the greatest commotion throughout India among the members of the nationality affected. The Government of India do not appear to have anticipated the widespread opposition which the proposed measure would excite—an opposition which is all the more entitled to consideration, because it proceeds from the most law-abiding and intelligent section of the community. That opposition does not appear to me either mistaken or factitious. The chief grounds alleged by the European community against the Bill appear to me reasonable and deserving of the most careful consideration of Government.

I would beg to call special attention to the fact that the opposition to the present Bill is not confined to the class principally affected by it, but extends to all those communities and nationalities who were conspicuous by loyal support of our rule during the Mutiny. Armenians, Greeks, domiciled Europeans of other nationalities, all seem keenly sensitive to the importance of the present measure as affecting the prestige of British supremacy in India.

4. Considering the mischief the proposal has already caused, and the great excitement which prevails while it remains nominally pending in Council, I should be prepared to recommend its formal withdrawal at an early date.

(Signed) A. C. CAMPBELL.

LETTER from the DEPUTY COMMISSIONER, Darrang, to SECRETARY to CHIEF COMMISSIONER, Assam.—(No. 49G., Dated 18th April 1883).

WITH reference to your Circular No. 21 of the 5th April, asking for an opinion on the provisions of the Bill to amend the Criminal Procedure Code, I have the honour to reply that I consider the Bill to be bad in many respects, and to be also very unnecessary. In the first place, I fail certainly to see what changes have taken place since the Bill for the new Criminal Procedure Code was introduced in 1881. If the Government of India then thought it so necessary and so advisable to give to Native magistrates the power to try Europeans, why was it not included then, and not deferred to this year? If it was not then necessary, whence has the necessity arisen now? Personally, I fail to see the necessity, either then or now, of a Bill like the present, which will practically give local governments authority to invest any officer with power to try Europeans. It is quite true that there is an apparent anomaly in the fact that Mr. Gupta as Presidency Magistrate may try Europeans, while his compeer, Mr. Dutt, though in charge of a district, may not; and I quite sympathise with the few gentlemen who, having passed the same examination as European magistrates, find themselves not invested with the same magisterial powers, though in the matter of their civil funds they have acquired the same advantages as their European compeers. But, allowing this to be a hardship, there can be no possible reason why what may be possibly a sweeping change should be introduced, as is now proposed in the amendment. If the Government of India consider that the five or six covenanted civilians who have passed in England should be given power to try Europeans, a Bill might have been especially introduced for them, on the understanding that such powers should not be given to others hereafter in the same way. If I remember correctly, special rules have been made in the Bengal Civil Fund to prevent other Native civilians acquiring all the possible advantages the earlier civilians may do.

In this case there would have been some opposition, but it would have been recognised as a special case, and there would not have been the steady determined opposition to the Bill which there now is. Admitting, therefore that, *prima facie*, there are some grounds for giving the Native covenanted civilians the powers now proposed, there is no possible reason why the classes (b), (c) and (d) should be included in the Bill. At present, the possible persons are very few, one of those affected being an intimate friend of mine, and on whom I should have no objection to see the powers conferred; but there is always the danger that some future Government may pass an amendment that assistant commissioners is to include extra assistant commissioners. And there is no doubt that, as far as the Province of Assam is concerned, it is this feeling which has led in fact to the opposition shown.

There are many extra assistants who, I am confident, would make good use of those powers; but there are most certainly a good many who would do the very reverse, while possibly acting quite within the law. In fact, I fail to see the slightest possible excuse for including classes (b), (c) and (d) in the Bill. To return to class (a), the next point to consider is whether, to oblige a certain small number, it is fair to the European community to deprive them of a long-standing and almost world-existing privilege.

There is undoubtedly a great deal of sentiment in the opposition to the Bill; but is there also not a great deal of false sentiment, arising from the radical theories of the equality of all men, on the part of those who hold that these powers should be given? At the time these gentlemen went to England, they knew then there was no probability of the powers now asked for being bestowed upon them, and therefore the disabilities they now lie under are not new or not unexpected. I quite admit that there may be cases in which it will be found very inconvenient for collectors and sessions judges not to have powers to try Europeans; but the time has hardly arrived, and the character of the present Bill, and the opposition which it has created, will make it now more difficult than ever to legislate when occasion requires; for there is no doubt that the opposition is not temporary

or factious, but steady and determined. No body can doubt that a large majority of officials sympathise with their non-official Europeans in their protests against the Bill, and perhaps, had they been consulted, the Government of India would not have now found itself in the dilemma it now is.

I have heard the objection taken that, as Native judges try civil cases in which Europeans are concerned with satisfaction to all concerned, there would be no harm in extending the same power in criminal cases; but those who bring forward this objection entirely forget that, in civil cases, arrest can always be avoided for a time at least, while in criminal cases it follows at once on the case being decided, or even in its being instituted: there is no possible analogy between the two.

As regards the Native population generally, it is quite certain they take no interest in the Bill. A respectable Native in nine cases out of ten prefers to be tried by a European to a Native magistrate.

In conclusion, therefore, I respectfully beg to enter a protest against the Bill on the grounds that, as far as classes (b), (c) and (d) are concerned, it is quite unnecessary, while, with regard to class (a), the claims of the individual officers and the advantages to be derived from investing them with powers are outweighed by the disadvantages arising from the ignoring of what is esteemed by the majority of Englishmen a long-standing and valued right of trial by their fellow-countrymen. I forward the reply of the Subdivision Officer of Mangaldai in original.

(Signed) H. C. WILLIAMS.

LETTER from the ASSISTANT COMMISSIONER, Mangaldai, to DEPUTY COMMISSIONER, Darrang.—(No. 230, dated 13th April 1883.)

WITH reference to your memorandum No. 271., forwarding copy of Circular No. 21 of 5th April, asking for criticism on the Bill to amend the Criminal Procedure Code, I have the honour to state that I consider the Bill as bad in principle and one which should not be adopted even if it were not unpopular. In all the discussion excited by the Bill I have not as yet discovered any reply to negative Sir Fitzjames Stephen's maxim, that, in deciding the court for the trial of an accused, the feelings of the accused and not those of the judge should be kept in view. As I feel certain that an Englishman would strongly object to his being put on trial before a Native magistrate, I have no hesitation in condemning the Bill without reserve, as likely to cause infinite disgust to the persons who are affected by it, without any counterbalancing advantage either to Europeans or to Natives. In my opinion, the better class of Natives neither wished for the Bill to be introduced, nor care to see it passed through the Council.

(Signed) A. J. PRIMROSE.

LETTER from the DEPUTY COMMISSIONER, Naugong, to COMMISSIONER, Assam Valley Districts.—(Dated 4th June 1883.)

WITH reference to the Chief Commissioner's Circular No. 21, dated 3rd ultimo, calling for a frank and independent opinion on the provisions of the Bill to amend the Criminal Procedure Code, so far as it relates to the exercise of jurisdiction by Natives over European British subjects, which has been vehemently opposed by the influential body of non-official Europeans throughout the country. Since the introduction of the Bill, the Native press has shown such a violent race-antagonism to exist amongst that class of Natives from whom the Covenanted Civil Service is likely to be largely recruited, that the impolicy of the measure is placed beyond doubt, and would, of itself, justify the withdrawal of the measure, the Council not being aware of such a deep-seated hostility at the time the Bill was laid before it. So long as false cases can be easily trumped up, and as easily supported by false evidence, Europeans living, as they do, isolated in the Mufassal would be menaced with serious danger at every turn. They could not condescend to the same unscrupulous methods by which such cases are conducted by

Natives; it would be like putting a man with a walking-cane to defend himself against a well-armed and experienced swordsman. To expose our fellow-countrymen and women to trial by the class of Natives alluded to would be unjust in the extreme.

3. During my experience of some 30 years, I have found European British subjects to have such a scrupulous regard for the rights of the Natives, that it would be unjust to deprive them of the much-cherished right of trial by their own countrymen, more especially as no inconvenience has been experienced owing to Native magistrates not exercising the power which the Bill proposes to confer on them. The few Europeans who may commit offences can be easily dealt with by European magistrates, in whom the Natives themselves have full confidence.

4. With regard to the "Objects and Reasons" of the Bill, I do not think it follows necessarily that, because Natives have been found qualified to exercise the highest judicial functions among their own countrymen, they are also qualified to be vested with the powers of a justice of the peace, and to exercise such powers over European British subjects. It might as well be argued that, because a bucolic can drive a plough, he is also qualified to mount a drag and drive a team of thorough-breds.

(Signed) T. LAMB, Colonel,

LETTER from the DEPUTY COMMISSIONER, Sibságar, to SECRETARY to CHIEF COMMISSIONER, Assam.—(No. 441E., Dated 30th April 1883).

I HAVE the honour to acknowledge the receipt of your Circular No. 21, dated 5th instant, in which you ask for my opinion on the provisions of the Bill to amend the Criminal Procedure Code.

2. The introduction of the Bill was, in my opinion, an unwise measure; for, although it may be the wish of Parliament (I say Parliament, because the Bill is the outcome of the Government policy admitting Natives of India to the Civil Service) to remove from the Code every judicial disqualification based merely on race-distinctions, yet the hostility evinced towards it, and which has appeared in the public prints, shows conclusively that race-antagonism is only dormant, and that it only requires a measure of this kind to open old wounds and produce friction between the races.

In this district, there have been two largely attended meetings of the planters, and the resolutions condemning the Bill passed at these meetings have been published in the *Englishman*.

I cannot but think that those who are in favour of the Bill look at it from a Presidency-town point of view, and ignore, or are ignorant of, the life of a European British subject in the Mufassal.

Any one acquainted with Mufassal life knows how easily and how often false charges are got up, and a solitary European is sometimes at the mercy of false witnesses. Now, with all due respect for the Native members of the Covenanted Civil Service, I would submit that their early training, their short residence in Europe and their mode of life in this country do not fit them to sit in judgment on an Anglo-Saxon in the Mufassal; and I do not think they could enter into or understand the feelings and customs of an Englishman.

4. My remarks above refer only to Covenanted Native Civilians who have been to Europe, but they apply with still greater force to those members of the Native Civil Service who have not been to Europe, and who are included in the Bill.

5. There are European British subjects to be found in the Mufassal, both Irish, Scotch and English, whose speech would hardly be understood by the Native Civilian, who in the course of his life has never met with such but gauges all Englishmen by the standard of those he has met with in the course of his studies. I need hardly say that, if such British subjects were tried in the Mufassal by a Native magistrate, although they did belong to the lower orders, yet their feelings ought to be understood and consulted, and this the presiding magistrate could not do, and the result might be the judicial bench would be brought into contempt.

6. As far as my experience goes, all Englishmen are most jealous of their privilege to be judged by their peers; and in a country like this, where the Natives are of different races, and filled with every prejudice caste and religion can create, the introduction of the Bill is fraught with much future embarrassment and danger; and I therefore think it ought to be withdrawn.

(Signed) A. E. CAMPBELL, Colonel.

LETTER from the DEPUTY COMMISSIONER, Lakhimpur, to ASSISTANT SECRETARY to CHIEF COMMISSIONER, Assam.—(Dated 3rd May 1883).

I HAVE the honour to acknowledge the receipt of your Circular No. 21, dated 5th April 1883, calling on me for a frank expression of my views on the provisions of the Criminal Code Amendment Bill.

2. You have indicated three lines on which the matter might be discussed—*1st*, that the Bill is good, and therefore must be passed *coûte que coûte*; *2nd*, that it is bad, and therefore must not be passed; *3rd*, that, though good, it is unnecessary, and therefore should be withdrawn. I think there is a fourth view, which may and ought to be considered, and that is that, whether bad or good, the Bill must now, for political reasons, be withdrawn as speedily as possible.

3. It is simply impossible to exaggerate the ill that the introduction of this Bill has caused in an outlying district like this. I came out to India in 1860, when the old mutiny feeling was still strong. I learned my drill in the ruins of a bungalow at Agra, from which one of my elder brother officers and his family had escaped with difficulty from the mutineers. Natives were treated with scant courtesy in those days, but still there was no such feeling of intense bitterness as there is now between us and them, not even at Agra, Lucknow, nor Cawnpore. The feeling then was, I remember it well, that the Natives had struck a blow for themselves, and had failed, and there was something of admiration for them in spite of the atrocities committed here and there. Gradually all feelings of bitterness expired, as things resumed their quiet course, and men began to half laugh at the ebullition of 1857–58, after the manner of Englishmen who have fought and done with it, or shook hands with our late enemies, and were perhaps better friends than before. Of late years, however, the policy of Government has been such as to put a stop to all *rapprochement* between the races. Quietly, insidiously, but steadily, the so-called liberal policy has been introduced. I say so-called, because this is a matter which has nothing whatever to do with the party politics of England, which country, of course, bears no resemblance whatever to India. It is a policy expressly invented for India. Its base is empiricism, pure and simple; its avowed object, economy and removal of anomalies. Mistaken ideas of philanthropy have taken the place of sound statesmanship. Parsimony has been substituted for judicious economy. Who is likely to be the better carpenter, he who buys the best tools procurable, or he who provides himself with cheap makeshifts? It has been declared in deed, if not in word, that all men in this country of diverse nationalities (of all places in the world) are equal, than which perhaps no more foolish proposition was ever enunciated. I would hold that no two men are equal, certainly no two races; and if the question lie between the Natives of India and Englishmen, the matter of superiority, physical, mental, and moral, is simply not worth the arguing. Bengalis may be superficially more clever, more apt in picking up the rudiments of a subject, but I never in the 23 years I have been in this country saw a really clever Bengali. Some of the warlike races may be as strong physically as our people, but they lack real intellect. And as for morals, what can be expected from an Asiatic cult? Ignoring all this, the Government have gradually ruled that Natives should replace Europeans in as many posts as it is at present safe to entrust to them. I wonder that the very fact of their having to make this reservation was not sufficient to deter the Government from pursuing their suicidal course. Where lies the danger of entrusting posts of authority to Natives? Honestly answered, the reply is *rebellion*, nothing less nor more. Then, if

it is unsafe now to trust Natives, how much more unsafe will it not be when we have educated them and trained them to combined actions? Every one must know this, conceal the knowledge how he may; and year by year every one has felt this sensation of insecurity more and more; year by year more concessions have been made to Natives; year by year the prestige of the Englishmen has been lowered, that prestige by which and by our bayonets alone we hold the country, till at last we have Natives on the High Court benches, and in the Legislative Council, and elsewhere. All this was borne silently, or nearly so, though we who live amongst non-officials know something of the spirit in which these signs of the times have been taken and read. The Native press throughout the country chuckled at what it could not believe to be our generosity, but thought to be our pusillanimity. The English press as a rule maintained a dignified silence; the English papers, in fact, "behaved very well," as a member of Council puts it. Still the breach between the people was widening every day, and now at last comes a distinct cause of quarrel, a battle-gage thrown down. There can be no mistake whatever about the English having picked up the glove. As for the Natives, I do not believe that one in ten thousand, or perhaps in a hundred thousand, knows anything at present about the quarrel, but those who do are no less eager for the fray than the English. It is a question not of Bábú this or that having the power to try Europeans; it is a question of "izzat," the question on which the typical Native will beggar himself and his family rather than give in. The Government have flattered and petted and promised all things to the Native; they educate him almost gratis; they retain all his old privileges and give him more; they surrounded him with all kinds of protective laws against the rapacity and brutality of the European, until at last he really thinks he is the European's superior, and that he is within a reasonable distance of seeing India in the hands of the Indians. On the other hand, Englishmen have at last awakened to all these facts. Men who have sunk their fortunes and spent their lives in this country see now to what we are tending, and they have put their feet down and said, "Thus far shall this policy go and no farther."

4. But is no use saying, as I see some of the journals say, that this is a question only between Europeans and the Government. It is distinctly a question (as the Native papers readily recognise) between Europeans and Natives.

5. I hold that it is a question which should never have been raised, but, whether I am right or wrong in this view, I think there cannot be two opinions as to the necessity for *the speedy* withdrawal of the Bill. Be it in its inception good or bad, it has roused, and its countenance before the public is rousing, such hostile feelings between the races that the sooner it is consigned to oblivion the better.

6. By saying this I do not wish it to be inferred that I have no arguments against the Bill. I could adduce what I consider the very strongest argument to show that it is bad, and that, even if good, it is utterly unnecessary. But arguments of this kind can be found in almost all the papers in this country and in England, and in the speeches of some of the members of the legislature, and they have been put forward much more forcibly and eloquently than I could propound them, and, therefore, I consider that it would be mere waste of time to enter further on the subject. The only argument in its favour that now seems to be pressed is the "administrative convenience" one. One hardly knows whether to smile at the audacity which produces such an argument as applicable to the present state of things (every one of course knowing perfectly well that there is absolutely no inconvenience whatever), or to weep at the shortsightedness of the policy which is quoted in favour of the argument, namely, that in the course of years a large proportion—one-sixth—of the Civil Service must be Natives. I would most respectfully reply that "I do not see the necessity." I know this is the line laid down by Her Majesty's Government; but it does not follow that it may not be rescinded. The Government will not, I suppose, deny that it can raise the per-centage to two-sixths or more. Can it not also reduce it one-twelfth or to *nil*? If it is shown, as it undeniably has been shown, that Englishmen will not have this amendment, and if the benevo-

lent, but mistaken policy of the Home Government will cause administrative inconvenience, the remedy is obvious, let the policy be changed.

(Signed) H. J. PEET, Major.

LETTER from the DEPUTY COMMISSIONER, Khásí and Jaintía Hills, to SECRETARY to CHIEF COMMISSIONER, Assam.—(Dated 30th April 1883).

I HAVE the honour to acknowledge the receipt of your Circular, No. 21, dated 5th April 1883, Judicial Department, forwarding a copy of the Bill to amend the Code of Criminal Procedure, and requesting an expression of opinion on its provisions.

The Bill is strongly opposed, it is stated, by the influential body of non-official Europeans in the country, and it is desired that the views taken may be stated with precision in order that the Government may thoroughly understand on what grounds it is recommended that the Bill should or should not be persevered with.

2. Three principal lines of thought, it is suggested, may be followed in considering the merits or demerits of the Bill, one, that the Bill is a good one, and the opposition to it so mistaken or factitious, that it will subside when sound reason resumes its sway; the second, that the Bill is bad in principle, and should not be adopted even if it were not unpopular; and the third, that the Bill, though sound in principle, is not of much importance, and that it would be unwise to proceed with it in the face of the genuine hostility which it has elicited. Further, it is suggested that, if thought necessary, the details of the Bill itself may be criticised.

In the third paragraph of your letter it is requested that the expression of opinion should be as frank and independent as possible.

These instructions allow of full liberty in dealing with the subject.

3. As a fact, not only are the influential body of Europeans opposed to the Bill, *but the entire population of non-officials throughout India*; and, if my experience and knowledge serves me to good purpose, I think it will be found that the majority of the official classes are equally strongly opposed to its introduction; it is a national, not a class, question at all.

4. I cannot conceive that the present opposition is of a description which will be overcome by time and the passing away of the excitement which has been caused. It cannot be supposed that it is either mistaken or factitious; indeed, it is very real, and there can be no mistake as to their opinions on the part of those who have been prominent in leading public opinion on the matter, men of education, experience, and long residence in the country, who know well what they think, and why they think it. There is no reason to suppose the feeling will pass away; indeed, there is, on the contrary, every reason to suppose it will be increased until the European public are satisfied that the Bill is to be withdrawn; and then, it is to be feared, a feeling of distrust, which is very much to be deplored, will remain.

5. I do not think it would be good in principle to allow that the Bill is not of much importance; it is a measure affecting very closely the interests of the whole body of Europeans in India, and every European individually; and to decide whether it is, or is not, to become law by simply attributing unimportance to it, would be practically to beg the question. It should be now, once and for all, settled whether the principles inculcated by this Bill are applicable under the circumstances of our rule and the position of Europeans in India, so that the latter may rest for ever satisfied that the Government of India will not again, in any time which can at present be foreseen, urge the adoption of a measure which will make Europeans in India triable before Native magistrates and judges in the Mufassal.

6. In generations to come, when, by education, morality, character, and civilization, the Natives of India, *men and women*, become equals of English men and women; when England and India are united as practically one nation; when the two peoples live together; when the existing hatred of the Christian religion and caste-prejudices disappear; when the lives of the two peoples, their modes of thought, their manners and their morality conform more to each other, such a result might be deemed natural; but

this is a question of the remote future,—a future so distant as not in the present time to make the question worthy of serious discussion.

7. I would not argue in respect of the Bill on the point of principle at all, or, at all events, not solely. Good policy as well as principles must necessarily be considered in connexion with the introduction of all important legislative measures in India; and on the score of good policy the Bill most certainly cannot, it seems to me, recommend itself to Europeans of experience and knowledge, and long residence in the country.

There is, in the first place, no necessity calling for an amendment of the law in this direction. Theoretically, there would be greater administrative convenience; theoretically, and, on principle, it appears right that no disqualification should exist on the part of the Native judge or magistrate. But are the natural feelings of the European to be entirely overlooked? Is the fact of the isolated position of the European in the Mufassal, and the special protection which is his due under the circumstances, necessary indeed to permit him to exist out here in safety, and to work for his subsistence, after having laid out his capital in the country, perhaps expecting to stay a lifetime in it, is the privilege heretofore enjoyed, of being subject to trial only before his own countrymen, not to be considered, and considered seriously? Is the *prestige* of the European, a very important factor in the discussion, to be lowered? For no one of experience can say that, in truth and reality, it will not be lowered, and that the Natives themselves will not consider it to be so. The *prestige* of the European is a very valuable aid and strength to the Government in India, and any measure which tends to lower that *prestige* tends to weaken the Government and its hold on the country and the people. It will be argued probably that such a measure will not humiliate the European; will not lower him in the eyes of the Natives of India. To this I reply that no person who has had a sufficiently long experience in the country, and been closely and for years in contact with its people, and has a knowledge of their character and habits, and knows how they have hitherto regarded the Europeans as belonging to a vastly superior race, a race strong, humane, just, and honest, and how they regard their own people as wanting in all these qualities, would argue in such a strain; and the fact is, that persons wanting in the kind of experience required are totally unfit to judge in such a matter. They have no knowledge of conditions as they really exist, no appreciation of the position, and cannot understand why principles applicable to a wholly different state of affairs should not apply to the state of affairs in India.

8. The particular reasons given for bringing forward the amendment are the removal of an anomaly, administrative convenience, and the impartial administration of justice. But anomalies must exist; they exist in India in every direction; they exist at home in England; they exist throughout the world.

Similarly, administrative inconveniences exist in almost every department, but such inconveniences are suffered, unless serious and calling for speedy removal. Urgency cannot be pleaded in this case most certainly; for many years to come Native civilians might profitably be employed in districts where there are no Europeans, and there must be a very large number of such districts, and the appointment of Natives to districts especially suitable on this ground for their employment would be a much more reasonable mode of meeting the difficulty than amending a law which has after years of preparation only just come into force, and investing Natives with the power to try Europeans.

The impartial administration of justice is in no way affected by the Bill, and why any such reason was urged in the deliberation on the Bill in Council is inconceivable.

The desire to have this power on the part of a few Native civilians, or the desire on the part of the Government in recognition of their education and general qualifications and position to confer it, are no good reasons. The whole question of the position of the European in India; the character not of the Native judge, but of the Natives of the country generally, and the dangers and injustice to which a European would be liable to be exposed, must be considered; and lastly, the question of good policy, considering and acknowledging the truth as regards the basis on which British rule in

India rests. England governs India by force of arms; and, however, beneficent our rule, and however much we may wish the contrary were the case, this cogent fact must not, until it shall cease to be a fact, fail to be regarded. So long as England holds India by the sword, so long it is useless and unprofitable to talk of doing away with race distinctions; the maintenance of race distinction would be the more consistent policy.

(Signed) W. S. CLARKE, Colonel.

LETTER from the OFFICIATING DEPUTY COMMISSIONER, GÁRÓ Hills, to SECRETARY to CHIEF COMMISSIONER, Assam.—(No. 420, dated 28th May 1883).

I HAVE the honour to acknowledge receipt of your Circular, No. 21, of 5th ultimo, asking for an expression of opinion on the provisions of the Bill to amend the Code of Criminal Procedure, introduced into the Council of the Governor General of India in February last.

2. In reply, I would state that, unless a very serious administrative difficulty arises, I would not recommend the adoption of the Bill. It stands to reason that an Englishman must understand an Englishman's ways of acting and thinking better than a Native of India, even if that Native of India was born and bred in England; the advantages become greatly enhanced when the latter has only resided in the foreigner's country for a far shorter period.

3. The Government of India, as is the case with the Government of any country where the governors and governed are of a different race and colour, is entirely dependent on the strength of its right arm. The word "loyalty," when referring to two peoples of this kind, has a different meaning: in the case of an European British subject, it means a fond heart towards the rulers of his own flesh and blood, whether they are in the ascendant or down in the mire; but the Natives of India can only be loyal to the Government of Great Britain so long as that Government is in power; overthrow that Government by a Government of their own, and I think he would be a coward indeed who would twit a man for transferring his affection to his own kith and kin.

4. However unpalatable may be the admission, the Government of India is the sword tempered by justice and mercy to the inhabitants of whatever colour or creed; it is impossible to suppose, with the agitation of the past four months before us, that the European British subject considers justice will be gained by permitting the Natives of India to hold criminal jurisdiction over him anywhere in the country; he fears greatly the result, for he knows that the tendency of a certain political creed is to level up, which in the present instance is to level down; and he also is aware that it is not possible for the Government in power to-day to bind its successors to-morrow. If the power to try the leading race is given to the few Natives to-day, it will be allowed to the many to-morrow, and the end of it will be that the non-official European will flee the country.

5. If the Natives of India are anxious to be tried by their own countrymen, by all means let them have their wish; but, as far my experience goes of this country, the right of holding criminal jurisdiction over the conquering race is not desired by the Natives of India as a body, but is asked for by a few persons, who are of a people the reverse of brave, who are disloyal to the core, and who would be driven into the sea to-morrow if India was ruled as a colony.

6. I hope I may be forgiven for writing so plainly, but the Chief Commissioner in his circular advocates frank and independent comment; and I do so feeling confident that, if the amendment to the Bill is carried and the Bill passes into law, a great blow will be given to our *prestige* in India, and the hearts of 99 per cent. of the Europeans in the country will be filled with the utmost horror and dread.

(Signed) H. ST. P. MAXWELL, Captain.

LETTER from the DEPUTY COMMISSIONER, Nágá Hills, to ASSISTANT SECRETARY to CHIEF COMMISSIONER, Assam.—(No. 95, dated 9th May 1883.)

I HAVE the honour to acknowledge the receipt of your Circular, No. 21, dated the 5th ultimo, forwarding copy of the Bill to amend the Criminal Procedure Code, and in reply I beg to express my opinion on its provisions, as follows:—

2. The Bill, in my opinion, is of too wide and sweeping a nature. Had the proposed change been limited, in the first instance, to the investment of Native members of the Covenanted Civil Service only with powers over European British subjects, I believe that very little opposition would have been raised. The formidable array of four classes whom it is proposed to create justices of the peace has caused European non-officials to see a future judge in every subordinate Native official, and has engendered the bitter hostility to the Bill evinced by the tea-planters of Assam.

3. I have had five years experience in two of the most important tea-districts of the Assam valley, namely, Lakhimpur and Sibságar; and during the whole of that period I mixed freely with the European planters. The one idea is that no Native can be an honest man, and that no decision at which he arrives is uninfluenced by bribery or personal considerations. Their opposition to the Bill, however much mistaken it may be, is not factitious, and, in my opinion, will strengthen with time.

The conditions of a planter's life tend materially to the creation of the spirit of hostility displayed against the Bill. Alone in an outlying garden, with none but Natives around him, he becomes dogmatical, and to a certain extent tyrannical. Underlying his confidence to his own powers there is always a latent fear that a false charge may at any time be brought against him.

This fear has hitherto been minimised by his knowledge that he would have a fellow-countryman for judge, but now he sees looming in the future false charges preferred before a truculent and alien magistrate incapable of entering into his habits and mode of thought.

4. The Bill has elicited genuine hostility, and the advantages to be derived from passing it will be more than counterbalanced by the irritation which it will engender.

5. Considered as a link in the chain of measures for the progressive advance of the government of this country, the Bill may be important, but I consider that the advantages to be derived from it independently are so insignificant that I would strongly urge that it be withdrawn.

(Signed) R. B. McCABE.

No. 20.

LETTER from the OFFICIATING SECRETARY to CHIEF COMMISSIONER, Central Provinces, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department.—(No. 2822-161, dated 30th June, 1883).

IN reference to your letter No. 163, dated 26th January 1882, calling for opinions on the Criminal Procedure Amendment Bill, I am directed to forward copy of a note recorded by Sir John Morris, and to say that Mr. Jones will submit his opinion within two days from this date.

(Signed) A. H. L. FRASER.

Enclosure referred to in preceding Letter.

NOTE by the CHIEF COMMISSIONER, Central Provinces.—(Dated 23rd April, 1883).

IN April, 1882, my opinion was asked on a proposal to relieve Native members of the Covenanted Civil Service of such restrictions on their

powers as are imposed by Chapter XXXIII. of the new Code of Criminal Procedure. I stated in reply (*vide* my secretary's letter No. 1892, dated 15th May last) that the proposal had my approval. The grounds on which this view was based were two—

(1) That these Native members of the Covenanted Service had been admitted after an examination conducted in London and designed to prove their European education and enlightenment; and (2) that the Government of Bengal, which is most interested in this question, had advocated the proposal.

2. I am still of opinion that there is nothing to urge theoretically against the proposal then under discussion; and I can hardly believe that, had that proposal alone been introduced into the Code, there would have been any serious objection or opposition. But the circumstances of the case have now entirely altered, and I cannot see my way to approve of the Bill now circulated for criticism.

3. In the first place, the scope of the measure is materially enlarged. To the Native members of the Covenanted Service are added (1) the members of the statutory Native service, who are appointed without a European training, and (2) assistant commissioners in Non-Regulation Provinces. To these two classes I should be averse to entrust the powers proposed until I had more clear proof of their ability to exercise them.

4. In the second place, His Honour the present Lieutenant-Governor of Bengal has, if I am not mistaken, expressed his inability to see any administrative necessity for the introduction of this measure, and his grave doubt as to the propriety of entrusting such powers as it contemplates to Native officers. This statement from the head of the Government most affected very materially modifies the position of the question.

5. The very strong, and sometimes deplorably violent, agitation against the Bill on the part of Europeans would seem now to make it impossible to introduce any change in the law at present. It would be better, therefore, in my opinion, to withdraw the Bill for the present, than to legislate on the basis even of the original proposal.

6. I record these views, because I am about to leave the Province, and I think it right to leave my views on record for the information of my successor, the more especially as I had recorded them a year ago, and have had to take up what may appear at first sight a different attitude now.

(Signed) J. H. MORRIS.

No. 21.

LETTER from the OFFICIATING SECRETARY to the CHIEF COMMISSIONER, Central Provinces, to the SECRETARY to the GOVERNMENT OF INDIA, Legislative Department.

No. 2940
165.

SIR,

Dated Nagpur, the 6th July 1883.

I AM directed, in continuation of my letter No. 2822-161, dated 30th ultimo, to submit the corre-

From the Registrar, Judicial Commissioner's Court, Central Provinces, to the Secretary to the Chief Commissioner, Central Provinces, No. 1134, dated 14th June 1883.

From the Officiating Commissioner, Jubbulpore Division, to the Secretary to the Chief Commissioner, Central Provinces, No. 1682, dated 4th April 1883.

From the Officiating Commissioner, Chhattisgarh Division, to the Secretary to the Chief Commissioner, Central Provinces, No. 2293, dated 9th April 1883.

From the Commissioner, Nerbudda Division, to the Secretary to the Chief Commissioner, Central Provinces, No. 1563, dated 25th April 1883.

From the Officiating Commissioner, Nagpur Division, to the Secretary to the Chief Commissioner, Central Provinces, No. 3184, dated 4th June 1883.

spondence noted in the margin,* and also a Memo. in which the Chief Commissioner has recorded his views on the Criminal Jurisdiction Bill. Mr. Jones has not thought it necessary to submit the opinions of Deputy Commissioners, but I am to mention that non-official European opinion is almost entirely adverse to the Bill.

This was, Mr. Jones thinks, only to be expected. The non-official European is but little acquainted with the considerations by which the Government of India is influenced in connexion with this matter, and unless public opinion among Europeans is somewhat systematically educated, there is but little chance that the present opposition to the Bill will disappear. He would therefore venture to urge that the leaders of the European community should be taken as much as possible into the confidence of Government. With their help a compromise, which may not be altogether unsatisfactory, may, he thinks, still be arrived at.

I have, &c.

(Signed) A. H. L. FRASER, Offg. Secretary.

Enclosures referred to in preceding Letter.

LETTER from the REGISTRAR, Judicial Commissioner's Court, Central Provinces, to the SECRETARY to the CHIEF COMMISSIONER, Central Provinces.—No. 1134, dated Nagpur, the 14th June 1883.

IN reply to your endorsement No. 1246-68, dated 29th of March 1883, forwarding a copy of the Bill to amend the Code of Criminal Procedure, 1882, I am directed to communicate the following remarks :—

2. No administrative necessity for the measure has arisen in these Provinces, inasmuch as there is in the Commission only one probationary member of the Native Civil Service, and no Native member of the Covenanted Civil Service. For the same reason there can be no objection, so far as regards these Provinces, to the Bill on the ground that it will be prejudicial to the administration of justice.

3. I am, however, to say that, if there were in the Commission Native gentlemen qualified under the Bill for appointment to the office of justice of the peace, the Officiating Judicial Commissioner does not think that the Bill, if passed, would injuriously affect the administration of justice, or the safety of European British subjects. The local government would not appoint any Native gentleman to be a justice of the peace unless he were fully competent to perform the duties of the office. There can be no question that magistrates possessing the qualifications required by the Bill are, so far as legal knowledge is concerned, fully competent to try European British subjects. Those officers on whose discretion, judgment and impartiality the local government could not rely, would not, it is to be presumed, be appointed justices of the peace. So also, with regard to the section of the Bill which confers the power of a justice of the peace on persons holding the office of district magistrate and sessions judge, the legislature may fairly assume that incompetent persons will not be appointed to such important offices. Moreover, it cannot be denied that an officer who is competent to exercise the powers of a district magistrate or of a sessions judge is competent to exercise the limited jurisdiction conferred on those officers with respect to European British subjects.

4. There are, however, two objections to the measure, namely, first, that a Native gentleman is not so good a judge as a European in a case in which a European is accused; and secondly, that European British subjects entertain a very strong opinion that a Native gentleman is not competent to try them. From a judicial point of view, it is desirable that an accused person should be tried by the best tribunal possible, and by one in which both he and the class to which he belongs place confidence. It is, Sir James Stephen says, (Criminal Law of England, page 206) hardly less important that the decision in a criminal case should be believed to be just, than that it should actually be just. Acting on this principle, the Legislature has reserved to the chartered High Courts, the Chief Court of the Punjab and the Recorder of Rangoon, all the powers of a High Court with reference to European British subjects. Unless, therefore, there is an administrative necessity for the change, the Officiating Judicial Commissioner would not recommend that jurisdiction over European British subjects be given to a

class of courts which European British subjects believe, rightly or wrongly, to be incompetent to give them justice. This opinion is given on a consideration only of the judicial administrative requirements of the Central Provinces. Mr. Crosthwaite does not think that he is called on to give any opinion as to the political questions raised in connexion with the Bill, or as to the claims of Native members of the Civil Service to the exercise of the powers conferred on English members of that service.

5. If, however, it is considered necessary, in view of the requirements of other provinces, or for other reasons, to pass the Bill, the officiating judicial Commissioner does not anticipate that, so far as the judicial administration is concerned, any difficulty will be caused in these provinces by its provisions if hereafter there are Native magistrates who are justices of the peace. For some years the district magistrate will always be a European British subject, and it will be easy for him to try all cases which in his opinion are such as, either owing to the nature of the charges or the fact of the parties and witnesses being Europeans, should be tried by a European British subject. By the time that Native gentlemen rise in these provinces to be sessions judges and district magistrates, the question of their competency or incompetency to try European British subjects will have been decided and will be beyond controversy.

LETTER from Major-General E. M. PLAYFAIR, Officiating Commissioner, Jubbulpore Division, to the SECRETARY to the CHIEF COMMISSIONER, Central Provinces.—No. 1682, dated Jubbulpore, the 4th April 1883.

IN reply to your No. 1246-68, dated 29th ultimo, I have the honour to state that although I consider a good deal of the feeling excited by the proposed introduction of the measure to be now legislated for is sentimental, still there is a certain amount of reason and justice against the bill in question.

2. The Bill proposes to give certain classes of Native magistrates up-country the powers, in respect of jurisdiction over Europeans, which the Presidency magistrates now exercise. But, in my opinion, there is a wide difference between the surrounding circumstances of the two. In the Presidency towns there is strong public opinion brought to bear on all the acts of the magistracy, which undoubtedly serves as a protection to Europeans who are subject to the jurisdiction of these magistrates, and thus ensures fair play. On the contrary, in a very large proportion of up-country areas there is no such "public opinion" and therefore no similar protection.

3. Again, the Presidency magistrates, from their training and education, and from constant association with Europeans, are able to understand the feelings, habits, and customs of this latter class, and are therefore fitted to gauge the probabilities of any case in which Europeans are concerned almost, if not altogether, as well as Europeans themselves. There is also in the Presidency towns less chance of false accusations and false swearing, which is notorious up-country.

4. It seems advisable to let well alone. The proposed change, so far as we have been able to learn, has been initiated at the instance of a small section of the Native official community, and has not been forced on the attention of Government by any strong consensus of opinion. The opposition to the proposed legislation on the part of the non-official Europeans of India has been so marked that any attempt to persist in carrying out the measure can only tend to keep up or rather to revive the feelings of class animosity which had, to a great extent, died out since the days of the Mutiny, and this of itself is a strong reason why the measure, not being actually necessary now, should be allowed to drop.

LETTER from Lieutenant-Colonel H. C. E. WARD, Officiating Commissioner, Chhattisgarh Division, to the SECRETARY to the CHIEF COMMISSIONER, Central Provinces.—No. 2293, dated Camp, 9th April 1883.

I HAVE the honour to acknowledge copy of the Criminal Procedure Code Amendment Bill, received under your endorsement No. 1246-68, of date 29th ultimo, calling for an expression of my opinion.

2. I would beg to submit that, in my humble opinion, the amendments proposed are not necessary, and it is not expedient that they should become law at the present time. My reasons I will give in detail immediately, but I would first ask to be allowed to point out that I am in no way averse to the principles on which the Native Civil Service has been founded, or to the theory of conferring high powers on selected Natives; rather the contrary, I have always advocated both, and I see no reason whatever why well educated Natives should not be able administrators.

3. My objections to the proposed amendments to the Criminal Procedure Code are these—

1.—I note that in the Statement of Objects and Reasons it is urged that—
 “ It was thought anomalous that while Natives of India were admitted to
 “ the Covenanted Civil Service and held competent to discharge the highest
 “ judicial duties, they should be deemed incompetent to be the justices of
 “ peace, and to exercise jurisdiction over European British subjects outside
 “ the Presidency towns.”

This appears to be the real argument in favour of the Bill; and I would urge that it is insufficient. It is not worth while to excite the feelings of the whole European non-official community for the sole purpose of getting rid of an anomaly, in a country like this where our whole is an anomaly, and where we meet with many equal if not greater anomalies at every turn.

If we begin by removing a much cherished privilege of the Europeans simply because it is an anomaly, we must be prepared to meet counter agitations on the part of the Europeans to bring about the withdrawal of the many privileges the Natives have under our rule, notably the immunity from personal attendance in court of ladies of rank and *purdah nashin* women.

Is it not an anomaly that this privilege is extended to Natives only, while English ladies of the highest rank have no such immunity from appearance?

2.—The agitation that this proposal to change the law has given rise to throughout India has shown that, were this bill to become law, there would be danger of collision between the Europeans and Natives. We can hardly expect to see the lower class European accept with equanimity the sentence of a Native judge, and I should never be surprised to hear of the Native judge being assaulted by the European whom he had sentenced.

I can speak from my own experience of my having had to protect my own Native subordinates from the violence of low class Europeans in petty civil cases. Their feelings would be harder to restrain in a criminal trial.

To my mind I would far sooner see the anomaly retained than occasion given for a grave scandal, which would only serve to increase the present race antipathy and the unfortunate feeling of antagonism between European and Native which recent events have now proved to exist.

3.—Where the European feels so strongly, it seems to me a matter deserving the gravest consideration whether the end to be gained is proportionate to the means, *i.e.*, is the benefit anticipated from these amendments proportionate to the injury they will cause by increasing the feelings of animosity that are now known to exist between the European and Native?

The mere prospect of this change in the law has shown how deep rooted a feeling of race antipathy and mutual distrust there unfortunately is.

I fear that, if these amendments become law, this feeling will not be diminished but will be increased, and every case tried under the new law will give rise to a stronger outburst of feeling and increase the strain on the relationship between the two classes.

It is true the English are naturally law-abiding, but here the feeling is so strong that I question whether they will accept patiently the proposed change in the law.

4.—I believe that the case of a European lady having to be arraigned before a Native judge for trial in a criminal case would be looked upon as an outrage to the feelings of the European community, and it seems to me that it is quite possible that this feeling of outrage may easily give rise to serious complications and scandals, which, in my opinion, it would be surely well to avoid if the object of the Bill has not some much more emergent object than that stated in the Preamble.

It is now well known how strong this feeling of distrust and antagonism between the majority of the European community and the Natives is, and if considered in the view of the possibility of the ladies of their families having to appear for trial in the courts of Native judges, it can hardly, I think, be looked upon as unnatural: rather the contrary, it seems to me to deserve careful consideration.

5.—I think there is room for doubt whether this proposed change will be altogether acceptable to the Native judges. As a matter of prestige they will doubtless hail with satisfaction a concession which may raise a few of their number to a position of superiority over the non-official European, but when the Act comes to be applied personally to themselves, I think it will be seen that the Native judge will be in no haste to avail himself of his powers, as he cannot but feel that they will have to be exercised at a certain risk to himself.

4. I have endeavoured to show that, in my opinion, the advantage to be gained by the proposed amendment in the law does not counterbalance its disadvantages. If, however, the change is considered absolutely necessary, I would suggest that it should be tentative: let the European criminal have the option of being tried by the Native justices of the peace or a European judge. This would meet the necessities of petty cases in districts where there were only Native officials; to save himself the trouble of a long journey the European might elect to be tried by a Native.

5. I am aware that the number of Native judges on whom it is proposed to confer criminal jurisdiction over Europeans is small, but this number will increase yearly, and it is intended that the men selected for this service shall be of high intelligence and superior ability, but it is not, I think, in the lack of intelligence or ability that the Native will be found wanting, but in the absence of a knowledge of European character, and the manners and customs of the lower classes of Europeans. At present the Native has no feeling in common or sympathy with the European, and without this it will hardly be possible for him to judge the European fairly.

There are few questions on which the thoughts of the two would not move in diametrically opposite grooves.

While, therefore, I am quite ready to admit that it is an undoubted anomaly to entrust the Native member of the Civil Service with the powers of a district judge, and to withhold from him jurisdiction over European offenders, I would submit that, in my opinion, the disadvantages of removing the anomaly are infinitely greater than the advantages which this removal is proposed to bring.

6. In conclusion, I would ask to be excused for speaking so plainly on this subject. The task is a difficult one, seeing that a different opinion has been given by so many in high authority, but it seems to me that this is an occasion where Government has a right to expect that each individual should speak plainly the views he holds on a matter of such vital importance both to the State and the people.

The Chief Commissioner knows that I have now been associated for more than 20 years with members of the Native magistracy, and that I have constantly placed on record my high opinion of the value of their services. He will not therefore, I trust, think that I am in any way prejudiced against the Native civilian as a class, for this is not the case.

It has seemed to me that the proposal to mend the law is one that will be far from improving the relationship between the Europeans and Natives, and I have therefore considered it my duty to say so.

LETTER from J. W. CHISLHOLM, Esquire, Commissioner, Nerbudda Division, to the SECRETARY to the CHIEF COMMISSIONER, Central Provinces.—No. 1563, dated the 25th April 1883.

IN reply to your endorsement No. 1246-68, dated 29th ultimo, I only offer an opinion on the Bill for amending the Code of Criminal Procedure in the matter of jurisdiction over European British subjects in so far as it seems necessary, or otherwise, in the present circumstances of these Provinces. There are those whose experience makes them more qualified to speak for other parts of India, and I do not think that on a question of this kind the whole country can be treated, except in theory, on exactly the same platform.

2. In my opinion the feeling of European British subjects in this country, in favour of being tried by European British subjects, is neither unnatural nor unreasonable. I should hope that in time this feeling will disappear, when the races know each other better, and are thrown more closely together. As yet, after more than a century of our rule, the admission must be regretfully made, that the races, as a whole, do not understand or sympathise with each other. The great body of the Natives look upon Europeans as a rough, harsh, and overbearing race, while the mass of Europeans look upon Natives as cunning, unscrupulous and false. Extreme types of character are thus ignorantly taken as representative of each race, and hence arises at times much bitterness and misunderstanding.

3. Among Englishmen the official is the only class much thrown among Natives, and I think that most officials of any standing are in full sympathy with them. I question, however, if Natives generally reciprocate this sympathy, even towards the official class, and this is owing to the barrier of caste, which however disguised, forces them to regard the European as impure. It is quite exceptional Natives who understand and appreciate Europeans as such, and this being the case I do not think that they should be given at present jurisdiction over Europeans. The fact is, they credit them with being strong handed and oppressive, and their prejudices, which are still strong, scarcely qualify them to be impartial. There is thus ground for the European objection to being tried by a Native judge, who, often, from not understanding him, would be liable to give ready credence to charges against him.

4. I would, therefore, only advocate jurisdiction over Europeans being given to Natives where an administrative necessity existed for conferring such powers. In these Provinces there is absolutely no such necessity, and the provisions of the proposed Bill would only make it possible to confer such powers at present in the Central Provinces on two Native assistant commissioners, neither of whom, with many good qualities, possesses any real knowledge of Europeans, not having been thrown among them. In the future, doubtless, the necessity may arise when Natives more largely fill the higher appointments, but if the future has to be provided for now, the best provision, in my opinion, for the law to make, would be to give jurisdiction over Europeans to every magistrate or deputy commissioner in charge of a district, and to every sessions judge in virtue of the office held and regardless of race.

LETTER from Lieutenant-Colonel M. P. RICKETTS, Officiating Commissioner, Nagpur Division, to the SECRETARY to the CHIEF COMMISSIONER, Central Provinces.—No. 3184, dated Nagpur, June 4, 1883.

IN reply to your endorsement No. 1246-68, dated 29th March, asking for an expression of my opinion on a Bill to amend the Code of Criminal Procedure 1882, so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to state that before submitting my reply, I thought it advisable to consult all the district officers of the division with the view of ascertaining, as far as possible, the feelings of those European British subjects who might be affected by the Bill.

2. I have not yet received any reply from the Deputy Commissioner, Balaghat, but all the other district officers report that, with very few exceptions, European British subjects are strongly opposed to the Bill.

The Deputy Commissioner, Nagpur, condemns the Bill as wanting in the three elements of—

1. Administrative necessity;
2. Finality;
3. Efficient and impartial administration of justice.

The Deputy Commissioner, Chanda, opposes the Bill on the ground that, if passed, it would seriously impair the supremacy of English rule.

The Deputy Commissioner, Wardha, professing himself to be an advanced Radical, considers the Bill to be in advance of the wants of the time.

The Deputy Commissioner, Bhandara, is personally in favour of the Bill, but even he considers “the bar of European extra-assistant commissioners and European honorary magistrates of sufficient magisterial experience from investment with the powers of a justice of the peace, to be quite indefensible.” He also proposes certain modifications, and thinks that a knowledge of English should be an indispensable qualification for every justice of the peace.

3. I forward the reports of all district officers in original, so that the opinion of those officers may be read in their own words.

4. I proceed now to give my own views.

The Statement of Objects and Reasons sets forth that “it was thought anomalous that while Natives of India were admitted to the Covenanted Civil Service and held competent to discharge the highest judicial duties, they should be deemed incompetent to be justices of the peace, and to exercise jurisdiction over European British subjects outside the Presidency towns,” and “the Government of India has accordingly decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code at once and completely every judicial disqualification which is based merely on race distinction.”

The Honourable Mr. Ilbert also in moving the Bill is reported to have said—

“We propose to substitute for the disqualification arising from race a qualification depending on tried fitness.”

“We propose to say that a very small number of specially selected Native magistrates may exercise that limited and qualified jurisdiction which can at present be exercised only by persons who fall within the extremely arbitrary and technical definition of European British subjects.”

5. Now to carry out this object the first amendment proposed is to repeal the last clause of section 22, Act X. of 1882, whereby European British subjects can, if considered fit, be appointed to be justices of the peace, and to substitute the appointment of—

- (a.) Members of the Covenanted Civil Service.
- (b.) Members of the Native Civil Service constituted under the Statute 33 Vict. Cap. 3.
- (c.) Assistant Commissioners in Non-Regulation provinces, or
- (d.) Cantonment magistrates.

I fail to see on what ground, either of justice or administrative convenience, an amendment of this kind can be defended. It is also distinctly opposed to the statement of the mover of the Bill, that the future qualification of a justice of the peace is to be one of “tried fitness.”

European British subjects are to be disqualified in future, not because of unfitness, but because they do not happen to be in one of the four favoured classes above mentioned, which are supposed to be specially fit. And yet none of these classes have yet been tried, while there are many European British subjects not falling within those classes, who have been tried and found competent.

Why should the result of past experience be set aside and Government be limited in its selection of justices of the peace to four particular classes, when experience has proved that outside those classes there are many European British subjects fit to be made justices?

6. I agree also with the Deputy Commissioner, Bhandara, that if a Native is to be made a justice of the peace, it is indispensably necessary that he should have a knowledge of English. I think, too, that a distinction must be made between—

- (a.) Members of the Covenanted Civil Service, and

(6.) Members of the Native Civil Service constituted under the Statute 33 Vict. Cap. 3.

Whatever claim the former may have to the same rights of jurisdiction as their European confreres in the same Service, no such claim can be asserted for the latter, on account of the totally different character both of their appointment and examination. In both cases the guarantee of fitness is not the same, and both classes ought not to be placed on the same footing as regards jurisdiction over European British subjects.

7. There is no reason, as far as I can judge, for supposing that justice would be furthered, or parties convenience, by jurisdiction over European British subjects being given to the four classes specified in the proposed amendment of section 22. I think therefore that the amendment is quite unnecessary and should not be passed.

8. The next proposal is to amend section 25 so as to make all sessions judges and district magistrates *ex-officio* justices of the peace, and to repeal so much of section 443 as limits jurisdiction over European British subjects outside the Presidency towns to magistrates who are themselves European British subjects, and to repeal a similar provision of section 444, and of section 450, with regard to sessions judges, and also a portion of section 459.

These provisions of the law at present bar all Natives outside Presidency towns from trying European British subjects. I think, however, that in the case of Natives who are considered fit to be magistrates of districts and sessions judges, the bar might be withdrawn on certain conditions, but I would not have all sessions judges and district magistrates (European or Native) to be *ex-officio* justices of the peace.

9. I agree in the following opinion expressed by Sir A. Lyall :—

“ The interests of the European British subjects and of the administration would be sufficiently provided for if the present restriction, under which no one who is not himself an European British subject has jurisdiction over an European British subject, being removed, power be left with the local government to appoint justices of the peace those Native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The local government would then apply the test of personal fitness to each particular case, for Native as well as for European members of the Covenanted Civil Service.”

10. The appointment then of a Native to be a justice of the peace would not depend upon his holding a particular appointment, but upon the question of personal fitness, to be determined by the local government; and I would limit such cases to those Natives only who are sessions judges or assistant sessions judges of three years, or magistrates of districts.

The time has not come, I think, when it is necessary for the better administration of the country that all Natives who happen to be in any of the four classes specified in the amendment to section 22, or who are sessions judges and magistrates of districts, should be vested with jurisdiction over European British subjects independently of proved fitness.

11. The changes contemplated by Government have greatly exasperated the European population, and it seems to me that Government should show some respect and sympathy to such opposition, and refrain from change, unless the change can be shown to be demanded by the common weal. But no such proof is forthcoming. No change seems necessary on the ground of administrative inconvenience, for to my mind the present jurisdiction over European British subjects might continue many years without any detriment to Government.

12. If, however, it be considered necessary to allow Natives to be made justices of the peace, then the safest way of doing so is not to withdraw the privilege hitherto enjoyed by British subjects of being made justices of the peace, but to extend the same privilege to Natives, on proof of personal fitness determined by the local government, but to limit it in the first instance to those who hold the office of magistrate of the district, or sessions judge, or assistant sessions judge of three years' standing, and who are acquainted with English.

OPINION by the CHIEF COMMISSIONER, Central Provinces, on the CRIMINAL JURISDICTION BILL.

THE question which this Bill raises is troublesome, both on account of the passions which it excites, and on account of the absolute difficulty of arriving at a satisfactory conclusion regarding it. The latter difficulty has, I believe, received too little attention. My belief is, that if we could refer it to some absolutely impartial tribunal, that tribunal would find it most difficult to draw the line between the conflicting claims of the European and Native. Justice herself would scarcely know how to hold the scales. Yet a clear perception of the difficulty of the problem would do much to mitigate passion. The question is disputed between Europeans on one hand, and *educated* Natives (the mass of uneducated Natives know and care nothing about the matter) on the other, and the latter are as able, and very many of them as willing, as Europeans to see both sides of the argument, and doing this to acquit their opponents of that which chiefly embitters controversy, viz., the suspicion of conscious unfairness, or at least of a more or less wilful shutting of the eyes to unwelcome arguments. Of course there are amongst us those who would obstinately and blindly resist any concession to Natives as a thing objectionable *per se*, but of such persons Government will not, and cannot take account, nor indeed will their feelings greatly influence the tide of general European feeling.

2. Assuming then that the effectual and impartial administration of justice is the object at which we aim, we must admit at once that *a priori* it is desirable that cases in which Europeans are the accused should be triable by either European or Native magistrates, just as cases in which Europeans are complainants already are. To make them triable by judges of one class only not only seems unfair, but has a tendency to produce actual and positive injustice. A law which should provide that in every case in which a Brahmin might be the accused and a man of another caste the accuser the judge should be a Brahmin, would be condemned by every one. And we must remember, too, that as all history shows, a legal disability has a tendency to create or intensify the race difference which it marks. The principle that no class should as such be excluded from the judicial office in cases between it and any other class is, one that all must accept.

3. But this great principle is subject to the proviso that persons fit for the judicial office are to be found, and that the fittest persons should be appointed. In the case supposed in the preceding paragraph, Brahmins might be the only people able to read and write, and might on this account, and with manifest propriety, monopolise the judicial office. The exercise of judicial power is not one of the natural rights of man. All that can be claimed is that the preference of one person over another should be based on considerations of fitness, and not on race disability. It is here that the English case, though at first sight weak, is in reality strong. That the law should exclude Natives altogether looks at first sight utterly indefensible, but in truth, and with some exceptions, the general effect of the law is to secure the appointment of the fittest judge.

4. That the European is generally fitter than the Native to try cases in which Europeans are accused appears to me to be abundantly clear. Of the total number of such cases a large proportion consists of cases in which a European is the accuser as well as accused, and here clearly the European is the fitter person. As I have said, no one has a natural right to try other people, and no Native has the smallest right to feel aggrieved because such cases are not entrusted to him.

Turning to those cases in which the accuser is a Native, I think that the judge should usually and preferentially be a European, for the plain reason that we know so much more about Natives than they do about us. The English magistrate is a man who has come to spend his whole working life in India; the Native magistrate is at the best one who has spent two or three years at college in England. Owing to caste restrictions and to the Native custom of secluding women, the two races are debarred from that intimate association with one another which would make either thoroughly competent to try the other. But the separation is not the work of the European, and at all events the mere fact that he lives from 25 to 35 years

among Natives, and though not in the eye of the law domiciled here, makes India his home for the best part of his life, gives him an advantage over even the Native civilian who has obtained his place by competition in England.

5. The honourable members who argued against the Bill in Council appear to me to have been led somewhat astray owing to their having thought too exclusively of the accused person. Picturing to themselves the position of a solitary European wrongly accused, they rather overlooked the fact that the effectual and impartial administration of justice is attained by a system which secures justice as between complainant and accused or between society and accused, and not by the system which affords a maximum of security to the accused. The conviction of an innocent man is the worst of all judicial crimes, but the acquittal of a guilty man comes next to it, and believing that the gentlemen to whom I have referred have thought almost exclusively of the first danger I am not able to press their argument as far as they do. If we are to think merely of the interests of the accused, then the argument in favour of his being tried by a European is overwhelmingly strong; but if while providing all reasonable security against the conviction of innocent persons we make it our chief aim that justice be done in the case, and this is what the effectual and impartial administration of justice means, then the argument becomes much weaker. But granting this, I am still compelled to admit what they greatly insisted on, that the European in this country is exposed to the danger of false accusation to a great extent, and is very helpless against it, and that this fact affords some additional reason for the privilege which the law now confers upon him.

6. The logical issue of the struggle between the principle that race distinctions are to be condemned, and the principle that the fittest judge, in the present case ordinarily the European, is to be preferred is, that the disability now imposed by law on Natives should be removed, and that it should be left to the Government to select fit persons who would usually be Europeans. Government would usually select Europeans just as (to take an illustration), although civilians are eligible, it almost invariably selects military officers for the post of cantonment magistrate.

But while feeling is so excited it cannot be hoped that Europeans will trust Government in this matter. They may consent to surrender some of their existing privileges, but they will certainly demand that those which they are permitted to retain be secured to them (as at present) by law. They will not leave the selection of fit persons to the judgment of the Government of the day. Some other solution of the difficulty must, therefore, be looked for.

7. It appears from the Bill that, in the opinion of the Government of India—

- (1.) All district magistrates and sessions judges may be regarded as fit persons;
- (2.) That fit persons may be selected from among officers exercising the full powers of a magistrate belonging to—
 - The Covenanted Civil Service.
 - The Statutory Native Civil Service.
 - Assistant commissioners in non-regulation provinces.
 - Cantonment magistrates.

In the first of the above proposals I entirely concur. I would claim this concession as a mere matter of justice to Native civilians. As the Honourable Sir S. Bayley said, it is a necessary corollary to their admission to the service. But apart from this the proposal would have my entire support. In the case of those whom it will include, we shall have the assurance that most of them have been educated in England, that all know English thoroughly and are men of experience, judicial and other. Government does not entrust every one with the charge of a district or the duties of sessions judge, and it would be a monstrous thing to allow a European to say that a man occupying such a position should not be trusted to try him.

8. And in the case of district magistrate and sessions judge, the argument based upon considerations of administrative convenience is, as Sir Ashley Eden showed, immensely strong. I am far from being inclined to make too

much of this argument. I would not abrogate a privilege so highly valued by Englishmen in order to make administration convenient. In the opinion which I formerly submitted, I was careful to say that the question of the privileges of the European British subject was one with a long history behind it, and not one to be decided by reference to considerations of convenience. But certainly when we have such strong reason to believe that district magistrates and sessions judges would be fit persons to try Europeans, the fact that if they are not allowed to try them the greatest inconvenience will result, ought to be taken into consideration.

9. To the second of the proposals made in the Bill I am strongly opposed. I of course would trust Government to select only fit persons, and I would be the last to say that numbers of fit persons are not to be found among the classes indicated. I have the pleasure of knowing numbers of Native officers in whose capacity and rectitude of purpose I could place implicit confidence. But I am not sure that Government is well advised in making just at this time that demand on the confidence of the non-official classes which this proposal makes; I am unwilling to see Government limit itself in its selection of Native justices of the peace to an infinitesimally small number of persons, and I altogether deprecate the idea that Government, to secure uniformity in its treatment of the two classes, should deprive itself of the services of all the non-official class. This proposal has had a great effect in weighing down the Bill, and anxious as I am that justice should be done to Native civilians, I would almost rather see the Bill abandoned than that, being passed, it should place such a grave slight on all classes of the European community outside the ranks of the service to which I belong.

10. The question then is, shall Government limit itself to the first of the two proposals mentioned above, or shall it, going further, seek to secure the ends at which the second proposal aimed in some other way. In favour of the former alternative there is the consideration that it confines the remedy to the immediate evil, and professing simply to do justice to Native civilians, raises no general question of principle, and does not, as the second clearly does, open the way to further agitation. It will be for the Government of India to decide this point; but in case decision should be in favour of the second alternative, I would suggest, as a possible means of attaining the end in view, that we might supplement the provision regarding magistrates and sessions judges by enacting—

- (1.) That cities with a European population exceeding a certain number should, for the purpose now in hand, be regarded as Presidency towns.
- (2.) That Government should take power to appoint any one, European or Native, justice of the peace, but that cases in which a European British subject being the accused, a Native might be the complainant, should be heard by a bench consisting of one European and one Native justice of the peace, difference of opinion, whether as to finding or sentence, being referable to the magistrate of the district.

I do not altogether like the second proposal. A mixed tribunal almost suggests antagonism; but guarded as it will be by the proviso that in cases of difference of opinion, the magistrate of the district may be called in, it would not, I think, work badly.

If these proposals should meet with acceptance the "solitary" European will have all reasonable security, for he can be tried only by the magistrate of the district, who will usually be a European and always a fit person to try him (vide paras. 7 and 8), or by a bench on which an Englishman will sit, and in which the magistrate of the district, usually an Englishman, will be in fact president. And the European inhabitant of great cities, who (to use the words of the Honourable Mr. Evans) sees about him "the power and influence of the European community, the blaze of publicity, the press, the bar, and (sometimes) the presence and power of the High Court" can scarcely object to be treated like his countrymen in Calcutta, Bombay, or Madras. And the Native cannot object to proposals which sweep away all race disabilities.

11. My predecessor, Sir J. Morris, has advised that the Bill should altogether be abandoned. I cannot concur in this; whatever happens,

Government is bound to proceed with the Bill to the extent of allowing Native civilians who have attained the rank of magistrate of the district or sessions judge to exercise the same power as European civilians.

12. I cannot conclude this note without saying that I feel most strongly the importance of taking notice of cases in which Natives being complainants, European tribunals fail to do their duty. I referred to this point in my former opinion. The Native press make much of it, and although they exaggerate greatly, I am unable to say that their feelings on the point are unnatural or altogether without foundation. We are as much interested as Natives, I might even say much more interested, in seeing that violent attacks by Europeans on Natives are adequately punished.

13. On reading over what I have written, I am sensible that I have said much that at first sight might have gone without saying. My reason for this has been that it is possible that this with other opinions will be made public, and that I have been anxious that it should be evident to all who may read it that I have endeavoured to take a fair and impartial view of the question in issue.

(Signed) W. B. JONES,
Chief Commissioner.

No. 22.

LETTER from the OFFICIATING SECRETARY to the CHIEF COMMISSIONER, British Burma, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

Judicial,
No. 282-12 L.

SIR,

Dated Rangoon, the 16th July 1883.

IN submitting the opinions cited in the margin on the Bill to amend

(1) Letter No. 71-7—3, dated 14th May 1883, from Commissioner of Arakan.

(2) Letter No. 82-7—3, dated 21st May 1883, from Commissioner of Arakan.

(3) Letter No. 974-458, dated 5th June 1883, from Commissioner of Tenasserim.

(4) Letter No. 110-28, dated 20th June 1883, from Recorder of Rangoon.

(5) Letter No. 158C., dated 20th June 1883, from Commissioner of Irrawaddy.

(6) Letter No. 35-8, dated 28th June 1883, from Commissioner of Pegu.

(7) Letter, dated 10th July 1883, from Secretary to Chamber of Commerce, Rangoon.

the Code of Criminal Procedure, 1882, the Chief Commissioner desires me to say that he would have preferred to leave the law unaltered. He does not think that any practical reason has been shown for changing the present law. No immediate administrative necessity exists. A desire for perfect equality and the abolition of all race

distinctions is no doubt felt, and naturally felt, by the educated classes of India. But as the inequality or distinction in this case does not prejudice in any way those who have not the privilege, and as it was known that the privileged class, who are not only numerous but entitled to consideration out of all proportion to their numbers, objected very strongly to a change in the law, Mr. Crosthwaite regrets that the proposals embodied in the Bill have been made.

2. If the question concerned the province of British Burma only, the Chief Commissioner's advice now would be that the Bill should be dropped. There is no necessity for any change in the law here; opinion, both official and non-official, is hostile to the proposed amendments; and there is not any likelihood of practical effect being given to the law for a good many years to come.

3. But the case with regard to India is different. After giving the question long and careful consideration, the Chief Commissioner feels it his duty to advise the Government of India to proceed with the Bill. Having regard to the position taken up by the Government in proposing the Bill, and to the character of the opposition, it appears to Mr. Crosthwaite that

the best course is to proceed with the Bill, making such alterations as may be necessary to meet real and reasonable objections. This is the only course which will leave the Government in a position to put its foot firmly down and to refuse the demands which are sure to be made for further changes in the law.

4. While he regrets the introduction of the Bill, the Chief Commissioner is at the same time of opinion that few of the objections raised to the Bill have any substantial ground. He would certainly recommend its abandonment if he thought that his countrymen would be subjected to annoyance or injustice, or if he believed that European capital and enterprise would with or without reason be deterred from seeking investment in India. There is no reason for believing that a properly qualified Native gentleman sitting as a magistrate will be more likely to be deceived by false complaints or more disposed to give a case against a European than an English magistrate. So far as race prejudice is concerned, it could find a field quite as readily in the decision of civil as of criminal cases. It is impossible to bring against our civil judges a charge of allowing their sympathy with their own countrymen to warp their judgments. There is no reason for supposing that the result will be different in the administration of criminal justice.

5. At present and for a long time past every magistrate has the same power to take cognizance of offences committed by European subjects as he has in the case of offences committed by persons of another class. He has power to issue process to compel attendance. It has not been found that this power, which might have been abused without incurring much responsibility, has in any way been misapplied. The whole agitation seems to proceed on the suppositions that the Government will appoint unfit persons to be justices of the peace, and that the persons appointed will be ready to abuse their authority. Experience justifies neither of these suppositions. Hitherto the Government has had power to appoint any European British subject, a field of selection quite wide enough to allow the appointment of unfit persons, but no complaints have, as far as is known, been made regarding the use of this power. So far as Native gentlemen have been entrusted with jurisdiction in cases in which Europeans are concerned they have not been led away by race prejudices. Many Europeans who are not British subjects live scattered over the country, but they have not complained of ill-treatment at the hands of the Native magistracy.

6. There is no reason whatever for apprehending that the Government will abuse the power which is now intended to give them. The executive Government will doubtless recognise the inexpediency of appointing a Native magistrate to be justice of the peace in a district much frequented by European settlers.

7. One of the most valid objections brought against the Bill is that which refers to the disabilities which it imposes on the Government. The Government will no longer be able to appoint to be justices of the peace non-official Europeans or European members of the Uncovenanted Service. No doubt this may cause some inconvenience in the future. The inconvenience will, however, be much less than is represented, as all present justices of the peace are unaffected, and the number of Europeans now appointed to the judicial branch of the Uncovenanted Civil Service is very limited. There is no way of meeting this objection and at the same time retaining the main principle of the Bill, except by widening the terms of section 1. Power might be given to the Government to appoint any 1st class magistrate to be justice of the peace; but in the present state of feeling any attempt to get over the difficulty in this way would be misconstrued. There is therefore no help for it. The inconvenience of excluding in future non-official Europeans and European members of the Uncovenanted Service who do not come under clause (c) of section 1 of the Bill must be accepted.

8. None of the alterations which have been publicly proposed as compromises that might render the Bill more acceptable to the class affected commend themselves to the Chief Commissioner's judgment. But he thinks that all reasonable objections on the score of danger to European British subjects might be met by adding to section 1 a provision that no one should be appointed a justice of the peace who had not a thorough knowledge of English, and did not habitually record his notes of evidence and his judg-

ments in that language. We do not give large powers to any English magistrate until we are satisfied that he has sufficient knowledge of the vernacular of his province, and it is only fair to exact a similar qualification from magistrates who are to deal with European British subjects. Before a magistrate is appointed to be a justice of the peace, the High Court might be required to certify that he possessed this necessary qualification. This is the only suggestion for the improvement of the Bill which Mr. Crosthwaite is able to make.

9. He believes and trusts that once the Bill is passed the agitation will subside, and that English good sense will perceive the unsubstantial basis on which much of the opposition has been raised.

I have, &c.
(Signed) E. S. SYMES,
Officiating Secretary.

Enclosures referred to in the preceding Letter.

LETTER from the COMMISSIONER of the ARAKAN DIVISION to the SECRETARY to the CHIEF COMMISSIONER, British Burma,—No. 71-7-3, dated the 14th May 1883.

IN reply to your letter No. 158-2L., dated the 7th April 1883, in which I am asked to give my opinion on a Bill to amend the Code of Criminal Procedure, 1882, I have the honour to say that I am opposed to the Bill for the following reasons :—

- (1.) Because I think it unnecessary and uncalled for at the present time as a matter of administrative convenience or public necessity ;
 - (2.) Because it contemplates the surrender of a privilege or protective right which has long been cherished as the birthright of every European in the country, and confers at the same time no compensatory gain or advantage on the masses of the people of India ;
 - (3.) Because although the object of the Bill is to remove from the Code every judicial disqualification which is based merely on "race distinctions," the means adopted to that end simply aim at levelling up the Native races to the status of Europeans, but do not in any way remove race distinctions notwithstanding any provisions to the contrary in the said Code ; these race distinctions will continue to prevail and enter largely into every transaction of Native life, social, religious, and political ;
 - (4.) Because, on the other hand, to attempt to force on the people of India an equality of race which they do not seek as between themselves and their European conquerors is a levelling-down process which sinks the prestige of the European and involves a surrender of race superiority so essential to the continued maintenance of our rule and supremacy in British India ;
 - (5.) Because no assurance can possibly be given by the present Government that the proposed measure bears the stamp of finality ; on the contrary, it seems like the furtherance of a policy which, if continued, must end in subverting the present order of things by destroying the foundation on which our rule in India has hitherto been based ;
 - (6.) Because this same proposed measure while satisfying the aspirations only of a few English-speaking Bengali agitators, who in no way represent the masses of the millions of India, vitally and injuriously affects the rights, and dangerously offends the susceptibilities, of 99 per cent. of the European and Eurasian population of our Indian dominions ;
 - (7.) Because the passing of the proposed Bill is calculated to provoke feelings of antagonism which must destroy all sympathy between the two classes of our European and Native subjects, and become a clog on the administration by frightening away British capital, arresting commerce, and threatening the true interests of the State at large.
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LETTER from the COMMISSIONER of the ARAKAN DIVISION to the SECRETARY to the CHIEF COMMISSIONER, British Burma.—No. 82-7—3, dated the 21st May 1883.

IN continuation of my letter No. 71-7—3 of the 14th instant, I have the honour to say that I failed in that letter to make any mention of the views taken by European British subjects in this division on the Criminal Procedure Code Amendment Bill, because a public meeting of the European population had already been held at Akyab on the 15th March during my absence to discuss the provisions of that Bill, and because the proceedings of that meeting were published in the local press under date 19th March and a copy duly submitted to the local government.

2. The meeting condemned the Bill and unanimously protested against its becoming law.

LETTER from the COMMISSIONER of the TENASSERIM DIVISION to the OFFICIATING SECRETARY to the CHIEF COMMISSIONER, British Burma. No. 974-458, dated the 5th June 1883.

WITH reference to your letter Judicial No. 158-2, dated the 7th April last, and its enclosure, I have the honour to report that almost the whole of the European British subjects of this division who are not Government officials are resident in the town of Moulmein; that on the 24th March 1883 a public meeting was held here (reported in the local paper of the 28th March, which is, I believe, filed in your office) to protest against the Bill; and that this meeting, while very numerous, was attended by persons of all sorts belonging to the class in question. Under these circumstances, I have not considered it either expedient or necessary to formally call for the opinion of any of the class, but have thought it better to content myself with casually gathering such opinions in conversation from time to time as occasion arose, and I will therefore in the following remarks endeavour to embody these opinions with my own on the subject.

2. At the public meeting above referred to there was, as will be seen by the report, the same denunciation as elsewhere of the Bill, though less violent; there was the same curious ignorance amongst the principal speakers of the provisions of the Bill which they denounced; and there was the same general distrust of the objects of the Bill and of its effects on the country. As regards this element of distrust or uneasiness, I gather that something is due to the mode in which the Bill was introduced. As has been remarked to me, the proposal came on the class affected as a complete surprise, showing a want of stability in our legislation and engendering a belief that without the slightest warning and quite unexpectedly the gravest changes might at any moment be introduced and passed in the Legislative Council, for it was known that an amended Criminal Procedure Code had been discussed fully for several years before, and this amended Code, without a word of legislation on the subject treated by the present Bill, had been in force but little over a month when this Bill was introduced. I may add that as neither in the draft Bill of 1879 nor in that which subsequently became law, both of which were fully discussed, was there any reference to the subject now at issue, I myself shared in the surprise referred to.

3. When divested of the mist of exaggeration by which it is enveloped, the real objection to the principle of the Bill is doubtless that it deprives the class in question of a privilege which they consider their birthright and hands them over in criminal cases to be dealt with by judicial authorities whose capacities for fairly judging them they profoundly mistrust. Rightly or wrongly they believe that they have inherited a right to be tried by their equals, by persons whose antecedents and education are at least not inferior to their own, and they consider that a very large proportion, if not the majority, of those who under the Bill might be invested with criminal powers over them will not and cannot possess this qualification. To the argument that for a good many years past such jurisdiction has been exercised irreproachably by the very class referred to in Calcutta and

possibly elsewhere, the objectors reply that while the individual officers in these cases are quite exceptional instances, the jurisdiction they have exercised has been hedged in by safeguards which rendered it little liable to abuse but which do not exist at small stations ; and, further, that any error committed in these cases could always be promptly remedied, whereas if a similar system were extended all over the country, any such remedy could only be applied after perhaps grievous injustice had been done.

4. Having given the subject the most impartial consideration I can, and apart from the question of right, which I do not feel competent to discuss, I am of opinion that there is some foundation for these objections. Perhaps the best test of their validity is to put the question to one's self, and for my own part I have no hesitation in saying that I would rather not be tried by a Native magistrate or judge on a criminal charge. I do not think this arises from any narrow prejudice about race, but simply from a consideration of what I believe to be facts. The Native magistrate or judge may be far my superior in intellectual power and legal knowledge, but he will almost certainly be wanting in what I should consider of far greater importance, and what would be possessed by a fellow-countryman of my own, *i.e.*, the power so to speak of putting himself in my place and judging whether acts attributed to me were probable or not under the circumstances. I should feel that I was being tried by a man all whose ideas of conduct, morality, even of right and wrong, were fundamentally different from my own, and that, unless all recent observations as to evolution and heredity are hopelessly wrong, the gloss of a university or European education could not have at once eradicated a distinction fostered in countless past generations and connected with every early association in this. It is true that a similar objection may be raised to the trial of Natives by Europeans, but apart from numerous obvious considerations which weaken the force of such an argument, the existence of an unavoidable evil as regards one class can hardly be accepted as a sufficient reason for deliberately inflicting the same evil on another.

5. With regard to the success said to have attended the exercise by Natives of the jurisdiction in question in Presidency towns, it appears to me that the objectors are right, and that however great that success, however eminent the services of the gentlemen referred to, they afford no sufficient guarantee that any similar success is to be expected by extending such jurisdiction all over the country as proposed by the Bill. In the one case a very limited number of gentlemen have been selected from the most advanced and civilized society in the country, and it is to be presumed that these selections have been made because, in the struggle for pre-eminence which always takes place in such society, they have shown themselves the fittest. After selection they have exercised the jurisdiction conferred on them in the face of public opinion, of detractors, rivals or enemies, only too happy to pounce on and denounce any real or supposed error ; while, lastly, throughout their career they have had and have the advantage, of which it would be derogatory to them to suppose they have not occasionally availed themselves, of being able in difficult cases to avail themselves of the very best advice to be had in the country. In the other case, that under the Bill, the whole of the conditions as regards selection and the exercise of powers are totally different, and there seems nothing to prevent an officer being vested with the jurisdiction in question solely by reason of his seniority, and because he has managed to fill without discredit at some possibly remote place any one of the appointments named in the Bill.

Finally, as regards the principle of the Bill, there can be no doubt that here as elsewhere it is most strongly and almost universally objected to by the class affected, and it has apparently evoked some feelings of race animosity from which hitherto we have been happily free.

6. If the principle of the Bill be adopted, I think the only objection to the provisions it contains is that it ties the hands of Government as to the appointment of justices of the peace in a manner which may prove inconvenient, as it takes away the power hitherto existing of appointing as such educated English gentlemen not in the service of Government ; the services of such persons must have been occasionally extremely useful in dealing with petty crime committed by European British subjects, and is likely to

become more so as the European element in the population increases. Finally, I would venture to remark that as a jury has always been believed to perform judicial functions, it would appear necessary in order to attain the desired end, namely, "to remove from the Code at once and completely every judicial disqualification based merely on race distinctions," to include in the Bill a section repealing section 451 of the Code, which gives an accused person the option of excluding from the jury which is to try a certain number of persons on purely "race distinctions."

LETTER from the OFFICIATING RECORDER of RANGOON to the OFFICIATING SECRETARY to the CHIEF COMMISSIONER, British Burma.—No. 110-28, dated the 20th June 1883.

IN reply to your letter, Judicial Department, No. 159-2L., dated the 7th April 1883, I have the honour to say that I have read with great attention the speeches made in the Council of the Governor-General on the occasion of Mr. Ilbert's motion that the Bill on the provisions of which I am asked for my opinion be published in the "Gazette," and after doing so I have the honour to say that my opinion entirely coincides with that expressed by the honourable and learned Mr. Evans in his speech on that occasion.

LETTER from the COMMISSIONER of the IRRRAWADDY DIVISION to the OFFICIATING SECRETARY to the CHIEF COMMISSIONER, British Burma.—No. 158C., dated the 20th June 1883.

WITH reference to your letter No. 466-2L., dated the 19th May, I have the honour to state, that in my opinion the introduction of the Bill to amend the Criminal Procedure Code relating to the exercise over European British subjects was ill advised; firstly, because there was no real occasion for any change; secondly, because any measure affecting race distinctions and privileges tends to raise excitement and animosities which should be carefully avoided; and, thirdly, because the Bill in question fails to touch more than the merest fringe of the anomaly at which it is aimed.

2. While admitting that the outcry against the trifling and unimportant change introduced by the Bill has been senseless in the extreme in respect of the general principles and policy of the measure, I am disposed very much to share the views of Mr. Fitzjames Stephen as expressed in his well-known letter to the *Times*.

3. As matters stand at present it will perhaps be expedient to pass the Bill as it stands, a distinct promise being given that for the future there will be no attempt made to interfere with the privileges which remain to British subjects under the existing law.

LETTER from the COMMISSIONER of the PEGU DIVISION to the SECRETARY to the CHIEF COMMISSIONER, British Burma.—No. 35-8, dated the 28th June 1883.

WITH reference to your letter No. 158-2L., dated the 7th April 1883, calling for opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, I have the honour to inform you that the opinions of a large number of European British subjects have been ascertained, and all, with only four or five exceptions, are violently opposed to the Bill, and of the district officers who have expressed their opinions only one is in favour of it. The reasons given are those which have already appeared in various forms, and it is not necessary to state them again. They are chiefly to the effect that the proposed Bill will take away from European British subjects the cherished privilege of being tried by their own countrymen, that there is no necessity for the measure, and that it will tend to encourage false charges being brought against Europeans, and render their position in the country intolerable.

As far as this province is concerned there is certainly at present no necessity for the proposed amendment, and it will probably be some years before any Native of the province will be thought fit for the appointment of justice of the peace. At the same time I am certainly not in favour of retaining the cherished privilege enjoyed by the European British subject of committing offences and giving every one concerned as much trouble as possible before he can be punished. In parts of India the necessity for some provision of the kind proposed has apparently arisen, so that there are grounds for making the amendment now, and the sooner it is settled, and as far as possible settled once for all, the better. The amendment, in my opinion, does not go far enough, and it is objectionable on that account, as before long further amendments will have to be made, and all that has lately occurred in connexion with the subject will have to be gone through again.

I think that the Governor-General in Council and local governments may well be entrusted with the power of appointing any one to be a justice of the peace, and the only change I would make in section 22 is to substitute "persons" for "European British subjects." I would omit section 444 entirely on the ground that if a person is considered fit to be an assistant sessions judge he would probably be fit to be a justice of the peace. If not considered fit he would not be appointed, and there is nothing to be gained in requiring him to undergo a three years' probation before he can possibly be empowered.

The success of the proposed Bill will of course depend in a great measure upon the care taken to appoint only those who have shown themselves fitted to be entrusted with the powers of a justice of the peace.

Cases of misplaced confidence may of course occur; but they are likely to be rare, and I certainly do not anticipate that the results of the measure will be in any way disastrous to the European British subject. As to false charges, a Native judge or magistrate of experience will certainly be as capable of dealing with them as any European can be, and as far as a Burman judge or magistrate is concerned, I think it likely that he will be more inclined to treat the European leniently than to do him any injustice.

LETTER from the SECRETARY to the CHAMBER OF COMMERCE, Rangoon, to the SECRETARY to the CHIEF COMMISSIONER, British Burma, dated the 10th July 1883.

I HAVE the honour to acknowledge receipt of your No. 159-2L., Judicial Department, dated the 7th April, asking the opinion of the Chamber of Commerce on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. In reply I am directed to inform you that the members of the Chamber entertain the same feelings against giving any Native jurisdiction in criminal matters over European British subjects as were expressed in the memorial sent to the Viceroy from the public of Rangoon some time ago.

3. In the opinion of the Chamber the proposed change is impolitic in the highest degree, and there is no practical reason or real urgency for withdrawing from Europeans the right of being tried by their own countrymen.

No. 23.

LETTER from the CHIEF COMMISSIONER, Ajmer-Merwara, to SECRETARY TO GOVERNMENT of INDIA, Legislative Department,—(No. 494, dated 21st June, 1883).

I have the honour to acknowledge the receipt of your letter No. 32 C., dated 17th March, calling for opinions upon the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and, in reply, beg to submit my own opinion

on the subject, and with it appendices containing the opinions of the following officers serving in Ajmer-Merwára :—

Mr. L. S. Saunders, Commissioner of Ajmer-Merwára ;
 Mr. J. R. Fitzgerald, Assistant Commissioner, Ajmer ;
 Mr. E. J. Kitts, ditto ditto.
 Mr. T. C. Pears, Assistant Commissioner, Merwára ;
 Pandit Bhag Ram, Judicial Assistant Commissioner, Ajmer.

2. As the law now stands, except in the Presidency-towns, no European British subject is amenable to the jurisdiction of any magistrate or justice of the peace or sessions judge who is not himself a European British subject. The Bill provides that the exemption shall be removed. It makes all sessions judges and district magistrates *ex officio* justices of the peace, and empowers the several local governments to appoint to the last-mentioned office—

- (a) any members of the Covenanted Civil Service, European or Native ;
- (b) any member of the Native Civil Service instituted under the Statute 33 Vict., cap. 3 ;
- (c) Assistant commissioners in non-regulation provinces, European or Native ;
- (d) cantonment magistrates ;

provided that all persons so appointed shall have been previously invested with the powers of a magistrate of the first class. Under the Bill, the local governments will no longer be competent to appoint to the office of justice of the peace any European British subject, unless he belongs to the Covenanted Civil Service, or is an assistant commissioner in a non-regulation province, or a cantonment magistrate.

3. The object of the Bill, as described in the Statement of Objects and Reasons, is to remove all race distinctions. It is apparently designed to give full effect to the idea embodied in section 87 of the Act of William IV. (3 & 4, chapter 85), which enacts that “no Native of the said territories (British India), nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office or employment” under the Government of India.

4. The Bill has met with very strong and general opposition from the English unofficial community in this country. It has been supported by some, indeed by the majority of the local governments, but it has been opposed by the present Lieutenant-Governor of Bengal and a few other officers of high standing. In the Legislative Council of the Governor-General, the case against the Bill has been forcibly urged, not only by the non-official English members, but also in a very able speech by a Madras Revenue officer and magistrate of long experience ; and it is generally understood that the objections which have been urged against it by the leading representatives of non-official English opinion, both in the Council of the Governor-General and at public meetings, and in the English press, are shared by a large majority of the English officials throughout the country. I have reason to believe that, amongst the officers employed in this Agency, the majority deprecate the proposed legislation.

5. Having given my best consideration to the Bill and to the correspondence and discussions which have taken place with reference to it, I feel bound to say that the arguments against the measure are full of force and difficult to controvert. It must, of course, be admitted that the Statute of William IV. from which I have quoted, and of which the substance was repeated, though with a slight modification, in the Queen’s proclamation of 1858, raises an argument against maintaining in our laws any disabilities founded upon distinctions of race, which is theoretically very strong ; and the argument is strengthened in the case of the Native members of the Covenanted Civil Service, who, having won their appointments at an open competition, have grounds for regarding themselves as eligible for any office or for any duty which is open to the English members of the Civil Service. The case of Native officials appointed under the Statute of 1870, and that of Native Assistant Commissioners in non-regulation provinces, are, I think, less strong ; but even in these cases, if the declaration embodied in the Statute of William IV. were to be carried out to the full extent which the language used implies, there would doubtless be a difficulty in maintaining the

distinctions which the Bill proposes to remove. But, as a matter of fact, the declaration in question cannot be acted on to the full extent of its literal significance. There will always be offices in India which, so long as British rule is maintained, must be reserved for members of the ruling race. It is not too much to affirm that under no conceivable circumstances will any Native of India, however eminent, be selected by Her Majesty's Government or by the Governor-General for the chief administrative post in an Indian presidency or province, or as the chief representative of the Government of India at the Court of any of her principal Native feudatories.

6. It is perhaps to be regretted that this patent fact was not borne more carefully in mind by the framers of the Statute; but, however this may be, the fact remains that, beyond a certain point, the language of the Statute must be regulated quite as much by political considerations as by considerations based upon mere legal qualifications. This would seem to have been the view taken by the late Lord Lawrence when issuing the Resolution of the 19th August, 1867, where reference is made to the circumstance that "Natives entrusted with administrative duties have a difficulty in dealing with independent Europeans," and local administrations were required to frame their proposals for "opening up to Natives of ability and character a more important, dignified and lucrative sphere of employment" in the administration of British India, "with due regard to the expediency of providing English officials for all districts in which European settlers or travellers abound."

Again, in the despatch from the Duke of Argyll, under date the 8th April, 1869, the principle is emphatically asserted that "it is one of our first duties towards the people of India to guard the safety of our own dominion, and that for this purpose we must proceed gradually, employing only such Natives as we can trust, and these only in such offices and in such places as, in the actual condition of things, the Government of India may determine to be really suited to them."

7. I must submit that these instructions have an important bearing upon the question involved in the Bill now under consideration. I should be disposed, however, to deal with that question from a somewhat different point of view, and to treat it rather as a question of retaining or withdrawing certain personal privileges and immunities hitherto enjoyed by persons of a particular class in their capacity as private individuals, than as a question of the rights and claims of officials; and, treating the question from this point of view, it appears to me that there is nothing invidious in continuing to European British subjects in the provinces the exemptions from the jurisdiction of Native magistrates and judges in criminal cases, which has hitherto been accorded to them. In a country in which Native gentlemen of high rank are constantly exempted from appearing as witnesses before the civil courts, and in which a similar exemption is granted to Native women of certain classes not necessarily of high rank, I can perceive nothing invidious, nor indeed anomalous, in maintaining a law which continues to Englishmen and women a time-honoured exemption from the criminal jurisdiction of courts presided over by Native judges and magistrates.

8. I would add that I do not believe that the exemption in question has been hitherto regarded by the great body of the Natives as a grievance; and I am persuaded that, if the Bill is passed, many very excellent Native judicial officers will regard the powers entrusted to them with dismay rather than satisfaction. It must not be forgotten that in some Mufassal stations the exercise of the jurisdiction of an European justice of the peace over Englishmen charged with offences against the criminal law, where none but Native constables are available, is not always free from difficulty. That difficulty will be greatly increased when the justice of the peace is a Native: and there are many Native gentlemen, whose opinions are valuable, who fully recognise this fact.

9. The excitement and agitation among the English community which the publication of the Bill has aroused have, it cannot but be feared, emphasised race jealousies and antipathies which it will take time to allay, and with these feelings has arisen a factitious demand, especially on the part of some of the Natives possessed with a certain degree of English education, and in the Native press, for the concessions offered in the Bill, but I have no doubt that, if the Bill is withdrawn, and if it is seen that the Government are

resolved to abide by the settlement of the question arrived at in 1872, any soreness which may have been produced by the heated discussions of the last few months will gradually pass away.

10. It has been argued, in support of the Bill, that, if not at once, in the course of a few years, when full effect shall have been given to the rules passed under the Statute of 1870, administrative convenience will require that Native judges and magistrates shall be invested with the powers it is now proposed to confer upon them. I cannot think that this argument is well founded. It appears to me that, with the rapid extension of railways which has gone on of late years and is still proceeding, there will be no practical difficulty in arranging for the trial of the few European British subjects who come before the criminal courts in the provinces, even when the full number, namely, one-sixth, of the appointments of those grades shall have been filled by Natives; provided always that the rule laid down by Lord Lawrence in 1867, of providing English officials "for those districts in which European settlers or travellers abound," shall be observed.

11. On the important question of the fitness of Natives to exercise criminal jurisdiction over Englishmen, I do not doubt that, in many cases, perhaps in most, justice would be efficiently and impartially administered in ordinary times by Native judges and magistrates, but I apprehend that, in times of excitement and in cases where caste-prejudices or religious prejudices were concerned, it is not so certain that a Native judicial officer, serving in a remote district, might not be influenced by motives and sentiments which it is very inadvisable to call into action. In a case, for instance, in which the accused was a Christian missionary, I can conceive a state of things in which it would be difficult to repose implicit confidence in the impartial action of even the most eminent Native functionary. The argument advanced in the debate in Council with reference to the ignorance of Natives of English family life and of English ways and manners is also, I think, deserving of serious consideration. Should it, however, be decided to introduce the proposed change into our criminal procedure, I would recommend that the measure be partially and locally applied. There may be certain parts of India where the division of class-feeling will be less real than in others; and I would propose, therefore, that discretion be given to local governments to declare certain areas to be scheduled districts for the purposes of the proposed amendment. I think it possible that the discretion which the Bill already gives to local governments will be calculated to give rise to invidious distinctions. Every first class Native magistrate will regard the powers of justice of the peace as the final test of his fitness; and, should these powers be not given from reasons quite sufficient in the eyes of the Local Government there will nevertheless be the feeling among Native magistrates that their qualifications are not cordially recognised. The discretion to which I have above referred should be given to the larger local administrations, while for the purposes of a small administration, like Ajmer Merwara, it would be well if the Government of India declared it to be a scheduled district.

12. With regard to the effects of the measure on the people it will concern in Rájputána, I see reasons for recording my dissent from the proposed change. It seems to me that one of the primary duties of the British Government is to secure peace between the naturally conflicting races of India. We are, from time to time, met with the danger which is always present in the race-antipathies of Hindus and Mussulmans. We have here in Rajputána in the railway population a class which cherishes an ignorant antipathy to Natives generally,—an antipathy which is most warmly reciprocated. This most deplorable fact is due to many causes. The Europeans in the railway have no opportunities of mixing with superior Natives. Their lives bring them into contact with those of a low social standing and, I fear, of low morality. The European on the railway sees speculation rife, and sees the Native official hard and cruel towards Natives "*ex uno disce omnes*" is the natural process of thought in the minds of Europeans in the class I refer to; and the European employé consequently regards the Native generally as separated from himself by a very sharp race distinction.

13. Though it may sound paradoxical, I believe that, until these two classes have been brought to a better understanding of one another's good qualities and inherent weaknesses, the removal by artificial means of this

race-distinction will but give fresh activity and bitterness to the antipathies which already exist. It is true that European officials and Natives of position are fitfully brought together, sometimes with the happy result that prejudices and misunderstandings are removed; but up to the present no such attempt has been systematically made to bring Europeans of lower grades and Natives of a similar rank together, and, until this much-desired object is attained, I would recommend that legislation be postponed.

I have, &c.
(Signed) E. R. C. BRADFORD,
Lieutenant-Colonel.

Enclosures referred to in preceding Letter.

OPINION of COMMISSIONER, Ajmer,

1. In my opinion, the necessity for amending the Criminal Procedure Act, 1882, has not as yet been satisfactorily established; without such necessity, there seems to be a general consensus of opinion that the Bill should be dropped. In that opinion I concur. Speaking of my own charge, however, it is true certainly that we have once or twice, for short periods, had only Native magistrates in Merwára; but the ease with which travelling is now effected in India has never made it troublesome or difficult to arrange for cases in which Europeans are concerned to be tried before an European magistrate, and I believe the time is far distant when any such practical difficulty will be seriously felt anywhere in India; for I hold it as extremely improbable that for many years to come we shall see any large tract of country entirely officered by Natives, for the following reasons:—

2. There is scarcely a city or bázár in India, I believe, where there is not a latent element of serious discord existing between the factions of Hindus and Muhammadans; and, had not the utmost tact and impartiality been continuously employed in dealing with these cases, this discord might break any moment into a flame which would only be quenched by the exhibition of considerable power. This fact renders it essentially desirable, in my opinion, to keep an European officer at the head of the affairs of each district. Believing this to be an occasion on which an officer who has been many years in India (and has carefully watched Native society, and finds this feeling increasing as education spreads, rather than diminishing) (*sic*), I feel bound openly to state my conviction, honestly and truthfully, however unpalatable it may be, so that there shall be no misunderstanding my meaning, and that our rulers, who are not brought so directly in contact with Native society as we are, shall not blindly believe that these race and religious animosities are buried and forgotten, because they are so seldom allowed to break out and speak for themselves. Instances could easily be given which would show how soon an outbreak of this character would occur if either a Hindu or Muhammadan magistrate was at the head of affairs. To ignore such cases is, I believe, as serious a political mistake as it is to make too much of them; but that they exist and are an ever-threatening danger must, I think, be fully recognised and acknowledged.

3. The higher executive posts, such as magistrates of the district, must, at all events in by far the majority of districts, therefore, I believe, be held by European officers; in fact, if a time ever comes when a large proportion of Natives are ready to step into these posts by right of their position or standing in the service, it will be found necessary to place some arbitrary limit on the number of districts in each province to be held by such persons; and, though I have always been an advocate for admitting Natives freely to all but the higher executive posts under our Government, I think we should act more honestly if we were at once to announce the fact that there are certain posts which we by right of our position (as aliens and conquerors of the country) declare a Native not to be eligible for. It is far better to do this now, when such posts are not asked for or claimed as a right by Natives, than to have to do it when some of these posts have been so held, than to wait till it has become apparent that this distinction between the races must be recognised.

4. Education has in the last 20 years made enormous strides, and these strides will doubtless be continued in mathematical proportion during the

next 20 years, and it is essentially necessary that careers shall be opened out for this mass of educated men. An educated Native is, I believe, intellectually the equal, if not often the superior, of an ordinary educated European, but an intellectual Native, however well educated he be, without the moral training and feelings inherent in most educated Europeans, is not well fitted to try even a male European criminally; but when it comes to be a question of trying a female European, can it be asserted that he is fitted to perform this duty properly and efficiently?

5. Any European in India who knows the estimation in which Natives hold the ladies of their own families cannot but answer this question in the negative; and I firmly believe that there is scarcely one Native magistrate (even after he may have visited England), who could understand the position, and therefore do real justice to any European lady who might be so unfortunate as to be placed before him for trial. If, therefore, there was no other reason for considering the present amendment of the Code premature, I would submit that this alone would be sufficient reason to show that the time has not yet arrived, nor is it likely soon to arrive, when this Bill should be introduced, and can be accepted with safety to the general community.

6. That the Native magistrates might, in all *ordinary* instances where men are concerned, be able to dispose of these cases satisfactorily, I will not deny. I know many Native magistrates who would do so, and who would generally err on the side of leniency to Europeans I believe; but our law must be not only a fair weather law, and it is under extraordinary cases of class-feeling, where the weakness and instability of their character (owing to a want of thorough conscientiousness based on religious principles) would affect their judgment, and prove that the necessary discrimination, and unswerving honesty of purpose, which we look for in a judge as above all other requisites, is wanting, though it is undoubtedly true that the judicial branch of the service, as being the one in which rules and laws are most exactly laid down, is the branch of work in which the Native particularly excels.

7. If, notwithstanding all arguments that have been adduced by the opposers of this measure, it be still held that there is a practical necessity for proceeding with this Bill, I think a compromise should be sought for; and the only compromise which will be satisfactory to all concerned is that the prisoner should have the option of either being tried by the Native magistrate or by an European officer. This is no novel proposal. Already the European on his trial before a magistrate and justice of the peace has an option, under section 408 of the Criminal Procedure Code, to appeal either to the sessions judge or the High Court; and I would extend this option in cases of trial obliging the Native magistrate to commit to an European court, if trial before him was objected to; in petty cases, or where much inconvenience to witnesses, or detention of the prisoner, was likely to take place, the European prisoner would probably waive his right, and the trial could proceed before the Native magistrate if he was a fit and capable man; otherwise the prisoner would demand to be committed to a higher Court, and this right should at least be secured to him.

(Signed) L. S. SAUNDERS.

LETTER from the ASSISTANT COMMISSIONER, Ajmer, to COMMISSIONER,
Ajmer, dated 17th April, 1883.

IF there is one principle which more than another has characterised our government of India during the past 10 years, and which must be further developed in the future, it is the more extended employment of the Natives of the country in almost every branch of the public service. I do not purpose to discuss whether the policy is a wise one. Personally I believe it to be so, but I wish to lay stress on its existence, and on the fact that its adoption has materially affected the question of giving Natives of India jurisdiction over European British subjects since the matter came up for discussion in 1872. In that year, proposals similar to those in the present Bill were rejected in the Council of his Excellency the Governor-General by a bare majority. Since then the doors of both the Covenanted and the

Uncovenanted Services have been opened wider to the Natives of India. It is probably not too much to say that, where there was one in 1872, there are now five Natives of India who have a reasonable expectation of rising to the position of district magistrate or sessions judge, and this number must constantly and steadily increase. It can hardly be doubted that, in a few years, the introduction of some such Bill as that now before us will become not merely a matter of justice and policy but an absolute and imperative necessity.

Were it not for remarks which have been lately common in the press and on the platform, it would seem hardly necessary to refer to the question whether carefully selected Natives of India are qualified to exercise the exceedingly limited and well-guarded powers with which it is proposed to invest them. We have seen them filling with ability and credit the high position of a High Court judge; in every district in India they are deciding civil cases which involve property of large extent, or rights and privileges which are held dearer still than property. But I am not aware that they have ever been accused of any race-partialities in cases where Europeans and Natives are antagonists.

It is still harder to believe that a Native judge is less qualified than an Englishman to pronounce on the value of Native evidence or to detect perjury in Native witnesses.

To put the case on the lowest and most unworthy grounds, I believe that those who will be invested with these powers, being men of education and intelligence, will thoroughly recognise that they are on their trial, and, knowing that in these days of improved communications there is no corner of the Indian empire so remote as to prevent an unjust decision prejudicial to an Englishman being brought into the fierce light of public opinion, will not dare to yield to any temptation of corruption or race-bias.

The experience of the Presidency towns strengthens the belief that Native magistrates will exercise the proposed powers with discretion, and that miscarriage of justice is not more likely to become more common than it is at present.

The one direction in which they may be expected to fail is (as has lately been observed by a distinguished writer in the English press) that possibly their decisions may be characterised by a want of courage.

The present measure has been framed with caution, and may be regarded as, in a great degree, tentative. If the worst apprehensions of the opponents of the Bill are fulfilled, it will be open to the Government to cease appointing Natives to the office of justice of the peace. If, on the other hand, the measure is now dropped, the time will assuredly come when it will not be possible to further delay the settlement of this question. Native opinion will almost certainly demand measures more extended than the present proposals, and as certainly they will be more fiercely opposed. If the measure could be quietly and permanently shelved, it would not be easy to advise proceeding further with it in the face of an opposition which, however exaggerated, unreasoning and deplorable, is without doubt real and widely spread. If we disregard the future, then I admit that the necessity for the alteration in the law is not urgent, but I have tried to show that, if the question be now laid aside, it must recur in a few years under circumstances which will make it far more difficult to deal with.

Although I believe that the passing of the proposed Bill into law is to be recommended on the lower grounds of political expediency, I think a few words should be said from the point of view of justice and consistency. Can it be right that we should do all we can to encourage higher education in the Natives of India and induce them to study the latest phases of modern thought and intellectual development, offer them responsible posts in the service of the State and make them collectors, sessions judges, judges of the High Courts, giving them, in a word, powers of life and death over their countrymen of full blood, and yet deny them the right to fine a drunken Eurasian? The desire to remove this blot appears to me to be something more than the weak sentimentality which it is represented to be by the opponents of the Bill.

Macaulay wrote in 1837 of the Sadr Court: "If it is fit to administer justice to the great body of the people, why should we exempt a mere

“ handful of settlers from its jurisdiction? That distinction seems to indicate
 “ a notion that the Natives of India may well put up with something less than
 “ justice, or that Englishmen in India have a title to something more than
 “ justice. We proclaim to the Indian people that there are two sorts of
 “ justice—a coarse one which we think good enough for them, and another of
 “ superior quality which we keep for ourselves.”

These words appear to me to apply, *mutatis mutandis* with much force to the present situation.

I have, &c.
 (Signed) J. R. FITZGERALD.

LETTER from the ASSISTANT COMMISSIONER, Merwára, to COMMISSIONER, Ajmer-Merwára.—(No. 128C, dated 9th April, 1883).

MY opinion is that no amendment of the Code of Criminal Procedure, 1882, is at present required, so far as it relates to the exercise of jurisdiction over European British subjects.

I have, &c.
 (Signed) T. C. PEARS.

LETTER from the ASSISTANT COMMISSIONER, Ajmer, to COMMISSIONER, Ajmer-Merwára.—(No. 567, dated 12th June, 1883).

I HAVE the honour to acknowledge your No. 683G., forwarding for opinion a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

2. I have known tolerably intimately several Native gentlemen who might be affected by section 1 (c) of the Bill, and from their relations with official and non-official European subjects who were their neighbours and with whom they were brought into frequent contact. I believe that the Bill, if passed, would work well, and that any apprehensions which at present exist would soon be allayed. At the same time, I admit that, with all the non-official European British subjects referred to, the Bill was unpopular.

3. It seems, however, to me evident that the Bill may suit one part of India or one part of a Presidency or even one part of a district and not necessarily suit another, at any rate until some years later. I would prefer, therefore, to increase the discretion allowed to local governments in such a way as to empower them to restrict the local area within which the powers conferred under section 22, Criminal Procedure Code, can be exercised; an appointment might then be made with reference to a single town or a single taluq.

I have, &c.
 (Signed) E. J. KIRTS.

NOTE by the JUDICIAL ASSISTANT COMMISSIONER, Ajmer.—(Dated 27th April, 1883).

So much has already been said in newspapers, and in the *Gazette of India*, on the subject, that I hardly think an elaborate opinion is required.

The Bill has undergone a thorough criticism, and has given rise to a controversy between Anglo-Indians and Natives, which is very much to be regretted.

The principal objections urged against the measure may be briefly summarized as the following:—

I.—That the Bill at once deprives Anglo-Indians of a privilege which they have enjoyed since the advent of British rule in India.

II.—That it subjects them to the jurisdiction of the members of a conquered race, whose status and social position are inferior to those of the conquerors.

III.—That Native magistrates are not properly qualified, by reason of their defective knowledge of English and their ignorance of European habits and manners, to try cases against European British subjects.

On the other hand, it is alleged in favour of the Bill that it removes at once, and completely, every judicial disqualification which is based merely on race-distinctions.

Any opinion expressed by a Native of India on the provisions of the Bill must naturally be a vindictive one, and place the writer in the anomalous position of an adversary attempting to disprove the disqualifications and imputations alleged against the race to which he belongs.

I have no intention of assuming that position, and would content myself with the remark that, irrespective of any statements made by either party, the British members of Indian administration are the only judges competent to determine this unfortunate question. They can, without any great amount of trouble or inconvenience, ascertain from their personal experience whether the Bill is likely to do any good or mischief, and whether race-distinctions in these days of mental and social development should be allowed to form a barrier against the eligibility of Natives, otherwise qualified and competent, to discharge the important duty which they are intended to discharge.

An opinion coming from that quarter would be the best and most valuable opinion, affording ample materials for a sound judgment on the suitability or otherwise of the measure.

There is no doubt that India has undergone a material change for the better under the benign influence of British rule.

Recall the times of Muhammadan rule, when, suffering under a foreign yoke, the rigours of laws framed and exercised by an unprincipled and tyrannical class of rulers, the people of India were reduced to a state of utter demoralisation, ignorance, and imbecility; and compare them with the results brought about by British rule.

No one can deny that the conquest of India by the British was not a conquest for the sake of plunder and devastation. It was admittedly a conquest in the cause of humanity—a conquest which had for its main objects the development of trade and the natural resources of the country, and the raising of the status of its people to a point more elevated than that sung by the Indian bards of antiquity.

How England has performed its mission does not require any great amount of investigation or research.

Under the paternal and fostering care of the British Government, the people of India have enjoyed all the benefits of a wise and impartial administration, their moral and intellectual powers have fully developed under the influence of Western science and thought, and they, who in Muhammadan rule were labouring under a long list of disqualifications and legal disabilities, are now eligible for important and high offices in the administration.

It is one of the moral principles of British law—nay, it is the pride of the British nation—that in the eye of the law all are equal. Disqualifications based merely on race-distinctions are legally no disqualifications; and, if at one time they were allowed as a matter of political or administrative necessity, they must as a natural consequence cease when that necessity no longer exists.

If I am not mistaken, I am only quoting what has been emphatically declared by competent judges of Native character and ability, that at the present moment, when Natives are eligible for the appointment of High Court judge, sessions judge and district magistrate, the anomaly of excluding a particular class from this jurisdiction should undoubtedly be done away with.

I fail to understand why Anglo-Indians should vehemently oppose the measure, which is a natural outcome of English magnanimity and generosity.

If England had used the people of India like slaves, denied to them the boons of administration on a par with Anglo-Indians, and effected all that was necessary to check their moral, physical and intellectual development, there would have been no occasion for the measure now brought forward; but, when, to all intents and purposes, it has acted generously and magnanimously, it should congratulate itself on the occasion when the people of

India are just enabled to reap the harvest which, by the fostering care and industry of the ruling power, has been brought to perfection.

Coming to the general question of ability, and an honest discharge of duty by Native magistrates in the disposal of cases against Europeans, it may be safely asserted that the fears entertained by the opponents of the Bill are entirely groundless. Native Presidency magistrates have not in any instance abused the exercise of their jurisdiction over European British subjects. Civil cases by and against Europeans are daily decided by Native judges, without affording the least cause for complaints. Criminal cases, in which the complainants and witnesses are Europeans, are tried by Native magistrates, and I have not heard of any miscarriage of justice brought about by a spirit of race-antagonism, or by the incapacity of the magistrate to sift the evidence or form a judgment regarding the demeanour and credibility of the witnesses produced before him. A judge or magistrate who fails to discharge his legal functions is not qualified to sit on the bench at all. Why, then, should fears be entertained regarding the conduct and capability of Native district magistrates and Native sessions judges in the Mufassal is not sufficiently clear?

Considering the limited scope of the Bill, there is every reason to hope that only the most competent and qualified Native gentlemen will be called on to try European British subjects, and there is no doubt they will acquit themselves honourably and creditably.

(Signed) BHAG RAM.

No. 24.

LETTER from the SECRETARY to CHIEF COMMISSIONER, Coorg, to SECRETARY to GOVERNMENT of INDIA, Legislative Department.—(No. 579-60, dated July 7, 1883.)

IN compliance with your letter No. 31C, dated 17th March 1883, I am

Mr. C. G. Plumer, Judicial Commissioner of Coorg.
Lieut.-Col. W. Hill, Commissioner of Coorg.
Major H. M. S. Magrath, District Magistrate.
Mr. K. Ganapati, Subahdár of the Mercára Taluq.
Mr. C. Soobiah, Assistant Commissioner.
Mr. N. Monappa, Subahdár of the Yedenaknad Taluq.
The Coorg Planters Association.
Rev'd. H. A. Kaundinya.

directed by the Officiating Chief Commissioner to submit a note by Mr. Lyall containing an expression of his opinion on the provisions of the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of juris-

diction over European British subjects, together with copies of communications on the same subject from the gentlemen noted in the margin.

I have, &c.

(Signed) H. WYLIE, Major.

Enclosures referred to in preceding Letter.

NOTE by OFFICIATING CHIEF COMMISSIONER, Coorg, dated July 7, 1883.

1. On receipt of the letter of the Government of India, Legislative Department, No. 31C., dated 17th March 1883, calling for opinions of Bill to amend the Code of Criminal Procedure, 1882, the Judicial Commissioner and the Commissioner of Coorg were asked to give opinions on the Bill. Their replies have been received, and the Commissioner of Coorg has forwarded with his letter the opinions of the Coorg Planters Association, of the district magistrate, of three Native officials, and one Native clergyman.

2. The Judicial Commissioner supports the principal of the Bill, but would limit its operation. The Native clergyman and two of three Native officials support the Bill more or less entirely. The other four opinions are against the Bill.

3. Before expressing my own opinion, I must mention that, when I met Sir James Gordon at Madras, the day before he sailed for England, he said

to me that he much regretted that he had not been able, owing to ill-health, to dispose of this reference. He added that he intended to write an opinion on his voyage home, and send it direct to Government; but that in case he was not able to carry out this intention, he begged me to mention, in disposing of the reference, that his opinion was strongly in favour of the withdrawal of the Bill.

4. A year ago, when I was serving as Financial Commissioner in the Punjab, the Punjab Government asked me to give an opinion on the question as then stated in the confidential letter (No. 7-592 of 28th April 1882, and enclosures) of the Secretary to the Government of India, Home Department. I replied briefly that it seemed necessary, on grounds of administrative convenience, to confer on Native covenanted civilians who may be appointed to hold the offices of district magistrate and sessions judge the same jurisdiction over European British subjects as is exercised by European British subjects holding those offices, but that I did not recommend any further alteration of the existing law.

In giving "administrative convenience" as the reason I accepted for the change of law, I did not accurately describe the argument which most influenced me at the time.

I was aware that any change in the law which has hitherto excluded European British subjects from the jurisdiction of Native criminal judges would be objected to by the European community, and I did not consider that such objection would of itself be in any way unreasonable; but I thought that, as the policy of admitting a large number of Natives to the Covenanted Civil Service had been adopted by the Government, the particular risk to the European community involved in this change of the criminal law ought to be incurred along with other difficulties and risks to the British Government of India with which the policy is admittedly weighted. It seemed to me at the time that, if Native deputy commissioners and sessions judges could not be invested with such jurisdiction, the fact might be used to their injury as a reason for not appointing them to such posts; also that, in the case of Natives appointed district magistrates, the want of such jurisdiction might injure their prestige and affect their power to control their districts successfully.

I regret to have to confess that, in the press of business, I wrote the opinion in question on a mere perusal of the papers then circulated to me. Those papers contained Mr. Gupta's extracts from the debate in the Legislative Council which occurred when a similar amendment of the law was proposed in 1872. His extracts were from speeches by the "ayes" only; since then I have read the speeches by the "noes." I have also read the petition to the House of Commons by the European and Anglo-Indian Defence Association, and many able letters which have appeared in Indian and English newspapers. I have also had opportunities of discussing the question with some officers of experience, Native and European, not only in the Punjab, but also in several other provinces. Official opinion is not unanimous, but I am now still less inclined than at first to support an amendment of the law. I am, in fact, in favour of the entire withdrawal of the Bill.

5. The Statement of Objects and Reasons which accompanies the Bill gives no reason for legislation but the desirability of abolishing anomalies and disqualifications based upon race-distinctions. Many absurdities as well as anomalies have to be tolerated in India, and, as the race-disqualification does not prevent a man becoming a judge, but only from trying a very small class of accused persons, it is not a disqualification of which the race can seriously complain. In respect to the grounds of my former opinion, I think, on reconsideration, that for a long time to come no serious administrative inconvenience is likely to result from the maintenance of the present law, and that the proposed alteration of it is, on the whole, more likely to hinder than to promote the present success of the policy of admitting Natives into the Covenanted Civil Service, and of appointing them to such posts as that of district magistrates and sessions judges. I mean that the success of that policy (and I desire its success) might be seriously endangered by the occurrence, which is by no means improbable, of cases in which the Native civilian judge or magistrate failed to do justice in the trial of Europeans.

under the influence either of timidity or race-feeling; and, secondly, I think that the Government would be oftener likely to hesitate to appoint a Native civilian to be district magistrate, because, having jurisdiction over Europeans, he would probably have to exercise it, than because, not having such jurisdiction, any cases occurring would have to be transferred elsewhere for trial.

6. In the excited state of feeling caused by hard language used at public meetings and in newspaper articles, it is not very easy for Native gentlemen concerned to publicly express an opinion against the Bill; most of them feel that to deprecate the proposal made by the Government of India is to incur the imputation of ingratitude to the Government and of a want of self-confidence and patriotic feeling. But I believe that the great majority of the Native gentlemen now serving as members of the Covenanted Civil Service, or as assistant commissioners in non-regulation provinces, would on the whole prefer to see the Bill withdrawn.

In the case of Native gentlemen not immediately concerned who are in no present fear of having the responsibility of trying such cases put upon them, there is, I think, great divergence of opinion. The great majority of the younger English educated Native gentlemen, official or non-official, are, I think, at the present moment in favour of the Bill, and it is also supported (as any measure supposed to be unpalatable to Europeans will be) by those Native gentlemen, educated or uneducated, who are disaffected to the British Government or who feel a race-antipathy to the English. But in the Punjab, where I had opportunities of conversing with Native gentry of various kinds, I came to the conclusion that a large number of sensible and well affected Native gentlemen were of opinion that the proposed change of the law was an unwise one. The great mass of the people are, I think, everywhere entirely uninterested in the question.

7. I hope I shall not be thought to have a low opinion of the Native covenanted civilians as judges or magistrates because I have written above of the probability of the occurrence or failures of justice of the criminal trial of Europeans in the Mufassal is entrusted to them. I have on the contrary, a high opinion of their judicial abilities, but it seems to me to be clear that the English covenanted civilian is in a position which makes it easier for him than for a Native to be an efficient and impartial judge in criminal trials of Europeans.

When both parties are Europeans, it will be admitted that the Native judge is at a great disadvantage in judging of the facts; when the accused is an Englishman and the prosecutor a Native, much race-feeling is frequently aroused. The English civilian judge before whom such cases come up is, no doubt, not insensible to race-feeling for his accused countryman, but, on the other hand, as a member of the ruling race, a generous determination to be just to the other races is easier than it would be if the position was reversed; and, moreover, there is a strong traditional feeling in the Indian Civil Service of its being the special duty of its members to be impartial in such cases, and to protect Natives from being oppressed. Again, in most of such cases the European defendant is a non-official, and the Indian civilian judge is sometimes apt to be prejudiced against such defendants by their bluntness of speech and comparative want of deference for the court. The European population among which the judge is living is scanty in number and changes rapidly; the judge may leave the district any day, and will soon leave the country for good; he is therefore, in a position to be but little afraid of unpopularity with the Europeans around him. My experience leads me to believe that those conflicting forces keep the English civilian on the whole very impartial in the trial of such cases. It is well known that, in European non-official or military circles in India, the civilian judge is very commonly believed to be prejudicial in favour of the Natives in disposing of such cases. I myself believe that this is so far true that bias is as often shown in favour of the Native as of the non-official European. On the other hand, a Native judge trying a criminal charge against a European about which race-feeling has been aroused is in a much more difficult position. He is generally by birth a man of the Native middle class, between which class and the non-official European a jealous sentiment is apt to exist. The country is his home, and he lives among the people, and is exposed by their customs and habits to outside pressure and solicitations of the strongest kind. The rough

and independent bearing of the accused will often prejudice him, and the great distrust which the non-official European almost always displays of a Native judge will be apt to annoy him. In fact, all the surrounding circumstances and all his natural sympathies are likely to bias him in favour of the prosecution, particularly if the prosecutor is a man of his own class or of good position in Native society. On the other hand, there is nothing to keep him straight except the fear of the disapproval of his English official superiors and his own conscience and firmness of character. Though I have a great respect for Native judges, I am of opinion that the average conscientiousness and firmness of character of the educated English gentleman is, at present, much higher than that of the Educated Native gentleman. The same comparison in favour of the Englishman may, I think, be made with many European races. This difference may very possibly be due to no inherent superiority of race; it may be simply the result of free political life, a pure form of religion, high education, and high civilization maintained through a great number of generations. But, whatever the cause may be, I do not think the fact of the difference will be questioned by any impartial person of Indian experience.

8. For the above reasons, I hold that the English judge or magistrate in India is naturally better qualified to try cases in which Europeans are accused than the Native judge or magistrate. If this is admitted, and if no great administrative inconvenience is to be anticipated at present from leaving the law as it stands, then it seems to me that to make a change in defiance of the decided opinion and strong sentiment of the European community on the subject would be unjustifiable. I myself put little weight upon the argument that, if the Government gives way to the Europeans now, it will not be able to legislate against their wishes in other matters, or in this matter when another occasion arises. I believe that they have been from the first on the whole in the right in this case, and that it has only been the occasional manner of their opposition, not the opposition itself, which has deserved to be called blatant or unreasonable. I think that the non-official Europeans (those who live in the Mufassal among the people in particular) are as alive to the progress of the times, and the necessity of gradual change in their relations with the Natives, as any other class. I think that the indigo-planters of Bengal showed this not long ago in their dealings with the Bengal Government. When the Government has a good case for legislation, I believe the majority of non-official Europeans will be sensible enough to recognise the fact, even though the legislation be against their class-interest. The opposition then will be weak and the Government will find itself amply strong enough to disregard it.

I do not think that any real political importance should be attached to the display of Native feeling on the question recently made in the newspapers and in speeches at public meetings. The feeling is shallow, and has been mainly aroused by the abusive language addressed on some occasions by the Europeans to the class of educated Natives and to a Government which those Natives know to be most benevolently disposed towards them. The real question is one of sentiment only as far as the Natives are concerned, and it is only a very small class which is interested in it. I do not intend to maintain that national or race sentiment should be disregarded in legislating for India—I hold the contrary opinion very decidedly; but the strong sentiment in this case is on the side which resists the proposed change, and which may be materially affected by it.

9. I believe the Bill to be based simply upon liberal and benevolent ideas; but, in studying its provisions (including those which, merely to avoid the least appearance of preferring English to Native magistrates, disqualify a number of competent European magistrates who are not covenanted civilians), one might be forgiven for suspecting it to be the outcome of a very exaggerated idea of the sensitiveness of the Natives in respect to race distinctions, and of an over-regard for such sensitiveness amounting to timidity. There is always some danger in India in any appearance of timidity. On the other hand, there will be no danger in disregarding the clamour which will be raised if the Bill is withdrawn by the particular classes of Natives who are now showing interest in it. It is impossible to conciliate by concessions those who are at heart radically hostile to the British Government; those who are content with progress under it will be

indifferent to the fate of the Bill if they see the Government persevere in its general policy of admitting the Natives to high offices and of gradually entrusting to them larger municipal powers of self-government.

(Signed) J.B. LYALL.

MEMORANDUM by OFFICIATING JUDICIAL COMMISSIONER, Coorg, dated
8th May, 1883.

ONE of the objections to the Bill is apparently founded on a misconception of its scope; it appears as if the great body of opponents think that, if the Bill be passed, any magistrate of the first class will have jurisdiction to try European British subjects. But that is not so. Section 443 as amended would run thus—"No magistrate, unless he is a justice of the peace and " (except in the case of a presidency magistrate) unless he is magistrate of " the first class, shall inquire into or try any charge against an European " British subject." To have jurisdiction the magistrate must be both a justice of the peace and magistrate first class, and the only persons who can be appointed justices of the peace under the provisions of section 22 as proposed to be amended are such covenanted civilian members of the Native Civil Service, assistant commissioners in non-regulation provinces or cantonment magistrates as are invested with powers of a magistrate of the first class. Those persons, and those only, would be able, if the Bill were to pass, to inquire into or try a charge against an European British subject.

2. It does not follow necessarily that every one of the class of persons referred to in the proposed amendment of section 22 would be appointed a justice of the peace. The discretionary power of such appointment is left to the Governor-General and to the several Governors; they might be trusted to use their discretion so that no one not in every way fit to discharge the duties of a justice of the peace should be appointed.

3. I quite agree that a person who is considered qualified to be a district judge or district magistrate is, or should be, *ipso facto* qualified to discharge all the duties pertaining to those offices, and to try European British subjects. The local governments should not appoint any one to those appointments who is not so qualified.

4. The Bill is the logical outcome of what has gone before; it is part and parcel of the policy which has been for many years in vogue in British India; it is the logical sequence of the admission of Natives to the ranks of the Covenanted Civil Service. No objection was taken at that time by those who now object to this Bill; they knew, or might have known, perfectly well that the covenanted civilians were the real administrators of the country; they knew, or might have known, exactly what were the powers, executive and judicial, wielded by covenanted civilians; they must, one would have thought, have foreseen that, when Natives were once admitted to the Covenanted Civil Service, the time would not be far distant when it would be necessary to remove all restrictions from the enjoyment by them of all the privileges, and from the exercise by them of all the powers vested in civilians; but the class to which the great mass of the opponents of the present Bill belong—the non-official Europeans—were silent.

5. Silent, too, were they when Natives were made presidency magistrates, High Court judges, and even when a Native was made acting chief justice in Bengal. Small blame, in the face of such apparently absolute acquiescence, is it to the official class that it was for the most part ignorant of the storm which this Bill would raise.

6. I cannot help thinking that some of the fears which this present Bill has raised are much exaggerated.

7. It seems to be assumed that, as soon as Native gentlemen are invested with the power to try Europeans in the Mufassal, false charges of all sorts will pour in against Europeans, male and female, and that their lives and liberties will be endangered. Such fears appear to me to be groundless; they can have no force unless it be taken for granted that the Native magistrate will conspire with the complainant in such cases.

8. And is it likely he would do so? What would the class of Natives, who alone would be empowered to try such cases, have in common with the

persons who it is supposed will be the complainants; and unless the magistrate is in a conspiracy with the complainant, the accused, it seems to me, would be just as likely (to say the least) to get justice from a Native magistrate as from a magistrate who is a European British subject. The Native magistrate, indeed, in my opinion, would be more likely to detect the falsity of the complaint, if it were false, than many of the young European justices of the peace who now have jurisdiction to try European British subjects. It may be that a Native magistrate would be ignorant of the manners and customs, ways of thought and feeling of the accused; but what is of much greater importance, he would be very well acquainted with the manners and customs, ways of thought and feeling of the complainant and his witnesses. My experience tells me that a Native judge, as a rule, is excellently well able to appreciate the evidence of Native witnesses; and is it likely that a Native magistrate trying a European would wilfully convict him of a false charge? To put it on no higher ground, he dare not do so; he knows that all his hopes of promotion depend on Europeans; he knows that the whisper of any injustice on his part against a European would lead to instant inquiry, and on detection to stern punishment. My own honest belief is that the very limited class of Natives whom by this Bill it is proposed to give discretion to the local government and Governor General to invest with jurisdiction over European British subjects may be trusted to exercise that jurisdiction impartially and without the slightest fear of any injustice being done to Europeans. That is my own honest, deliberate opinion, but, at the same time, I am not likely to be affected one way or other by the Bill, and the great mass of the non-official Europeans who are most interested in the Bill would appear to have a violent antipathy to its provisions. Such strong and practically unanimous feeling against the Bill as has been shown by the non-official Europeans cannot of course be lightly disregarded.

9. It is said that the non-official Europeans, the planters, &c., came out to India under a sort of guarantee from Government that they were to be amenable in criminal matters to the jurisdiction of European British judges only. I have no doubt that those who put forward this plea fully believe in it; but I would like to know, as a matter of fact, how many planters, &c., before they came out to India ever made any inquiry on the point; and I would like to know further, supposing the inquiry to have been made and the reply to have been that they would be amenable to the jurisdiction of Native magistrates, how many would have been deterred from going out to India. They came out to India, as we officials came out, because they were obliged to work for their livelihood, and India offered them a likely field for their labour; and, in my opinion, the passing of this Bill would have a very inappreciable effect in thinning the ranks of the non-official Europeans.

10. But, at the same time, as I have said, the strong feeling shown against the Bill should not be lightly put aside. I would not counsel the total abandonment of the Bill, because I honestly believe it to be a Bill embodying principles which must sooner or later be given effect to, and because I would not have the Government yield now to an agitation which it is clear it must face at some time.

11. It is possible that there is no immediate necessity for the Bill; it is possible that it would have been better not to have introduced it just now; feelings have been stirred up which all would have preferred to have allowed to lie dormant; but the Bill has been introduced, it is strictly, as I have said, part and parcel of the policy of the Government in India for several years past.

12. Unless that policy is to be reversed, sooner or later a similar Bill must be introduced. As the number of European officials decreases and the number of Native magistrates and non-official Europeans increases, jurisdiction to try European British subjects must be given to Native magistrates; and, if this Bill is abandoned, another of similar import will have to be introduced, which will again give rise to agitation such as is now rampant. The first furious blast of the storm has now been encountered by the Government. There would be, in my opinion, a want of courage in quailing before the storm and abandoning the Bill, leaving a future Government to encounter over again the same opposition, with the disheartening precedent of the

success attendant on the present agitation. While, however, I would not abandon the Bill altogether and expose the Government to the dangerous charge of having yielded to agitation, I would endeavour to meet as far as possible the objections raised. The principle of the Bill should, in my opinion, be insisted on, but in detail its operation might be limited. His Excellency the Commander-in-Chief, in the course of the debate in Council on the Bill, suggested a very fair compromise, namely, to limit the jurisdiction to try Europeans to such Natives as are, or may become, sessions judges and district magistrates. To carry this proposal out—

Section 1 of the Bill should be omitted.

Section 2 should stand as at present (it should be section 1).

For section 3, I would substitute the following:—

In section 443, after the words “and a European British subject” insert “or a district magistrate and sessions judge.”

For section 4, I would substitute—“Any judge presiding in a court of session may exercise jurisdiction over a European British subject, but an assistant sessions judge shall not exercise such jurisdiction unless he is a European British subject and unless he has held the office of assistant sessions judge for at least three years.”

For section 5, *substitute* “Section 450 is hereby repealed.”

Add fresh section—“After the words ‘European British subject’ in the last line of the second paragraph of section 459, add ‘or a district magistrate or sessions judge’.”

A fresh section might also be added something to the following effect:—

“Any sentence of imprisonment passed on a European British subject by a sessions judge or district magistrate who is not himself a European British subject shall, on the application of the person sentenced, be suspended pending an appeal.”

(Signed) C. G. PLUMER.

LETTER from the COMMISSIONER, Coorg, to SECRETARY to CHIEF
COMMISSIONER, Coorg.—(No. 81—40, dated 28th April 1883).

I HAVE the honour to acknowledge receipt of your docket No. 2,255—917, of the 30th March 1883, forwarding to me, for an expression of opinion, draft Bill for the amendment of the Code of Criminal Procedure 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and directing me to obtain and submit that also of the Coorg Planters Association, and of others competent to give an opinion on the proposed measure.

2. In reply, I beg to observe that the desire with which the Government is animated in removing such anomalies is honourable and just; but I regard the measure itself as being premature and impolitic; premature, because, however much the whole moral tone of the Natives of India who have had the benefit of an English education may have been elevated so as to justify their appointment to posts of responsibility and trust, the characteristics of the great body of the populace, especially those in up-country districts, with whom European planters are placed in immediate contact, has not altered so far as to warrant the abolition of distinctions of the nature proposed between European and Native; also the number of Natives who have entered the Civil Service is so very few that their feelings may for the present be sufficiently consulted by their non-appointment to districts containing a large number of European proprietors of land. The exercise of jurisdiction over Europeans by the Assistant Commissioner, as provided in the Bill, is not needed, as there are two justices of the peace in Coorg, and his duties are confined chiefly to the disposal of civil cases and the charge of the district treasury.

3. The amendment of the Code appears to be impolitic, inasmuch as it deprives Europeans of the time-honoured privilege, which they prize, of being tried by their own countrymen, and the deprivation of which would unquestionably tend to lower them in the estimation of their Native neighbours.

4. In Coorg, which has an European population of nearly 200, most of whom are engaged in the cultivation of coffee estates, the number of cases

which come before the justices of the peace is very few. They consist mostly of petty complaints of ill-treatment made by servants against their European masters, and of mischief made by raiyats who have allowed their cattle to stray into coffee estates. In nearly every case the complaint is much overstated. Consequently, there exists in the minds of Europeans a strong feeling, as expressed in paragraph 4 of the letter from the Coorg Planters Association, that the present restriction of powers acts as a protective measure against the institution of false cases, which, if trumped up against them, could not easily be rebutted owing to their isolated position. Not only would the disgrace of being dragged before the courts be much felt by gentlemen of standing and position, but they apprehend that their authority over their workmen would by such means be so much weakened as to affect their chances of success in the enterprise in which their capital is embarked. Mingling, as they do, freely with the Native population, and having ample opportunity of judging of their character, such apprehensions must be well-founded, and are, in my opinion, deserving of the fullest consideration on the part of the legislature. Their allegation as to the untrustworthiness of a great portion of the evidence tendered by Natives is fully borne out by the daily experience of the courts; and, as urged, Native magistrates might occasionally feel difficulty in disposing of cases between Europeans, owing to their want of knowledge of their habits and modes of thought. The following cases, which have actually occurred under existing arrangements, may be quoted as illustrative of the evils which they apprehend as likely to be augmented:—Lately the coolies of an estate in South Coorg, led by their maistries (gangmen), made an attack upon the European superintendent, and, in order to mislead the authorities, had recourse to the ordinary Native stratagem of being the first to lodge a complaint. The European magistrate dismissed it as false, and punished the ringleaders severely, which had an excellent effect in checking a recurrence of similar attacks. In a case of forgery tried at the last sessions, a determined effort was made by the production of false witnesses to show that an East Indian who had served 14 years as a superintendent, and who enjoyed the confidence of his employer, had betrayed his trust by authorising the accused to make use of his name. In a case in which an English lady was the complainant and Europeans were parties, a desirable compromise was effected; whereas had the magistrate been a Native, the lady would in all probability have refrained from seeking the aid of the court.

5. I would further urge the desirability of the early withdrawal of the Bill, on the ground that the agitation which it has caused has already been productive of ill-effects in promoting race antagonism, which is especially to be deprecated in a province like Coorg, where it is essential, for good government and the development of the resources of the country, that friendly relations should subsist between the large number of European planters and their Native neighbours, and between the former as employers and the large bodies of coolies who are employed.

6. Copies of letters received from Major Magrath, the district magistrate, and Mr. Ganapati, subhadár of the Mercára Taluq, opposing the Bill, and from Mr. C. Soóbiah, assistant commissioner, Mr. Monapya, subahdár of the Yedenalknad Taluq, and the Rev. H. A. Kaundinya, in favour of it, are attached, as well as copy of the letter from the Coorg Planters' Association already referred to.

I have, &c.
(Signed) W. HILL, Lieutenant-Colonel.

LETTER from the DISTRICT MAGISTRATE, Coorg, to COMMISSIONER, Coorg.—
(No. 44—12, dated 11th April 1883).

WITH reference to your docket No. 18—4, dated 4th April 1883, forwarding for opinion a Bill to amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction over European British subjects, I have the honour to state that I consider the change proposed in the law is undesirable on political grounds: it is a privilege of Englishmen to be tried by their peers from ancient times. The Bill has been, and if passed into law

will be, mischievous in its results, and tend to increase race-antagonism, which it is most desirable to avoid in our Indian Empire; and further, no desire or wish on the part of the Native population of India has ever been apparently put forward for the change proposed by the Bill. They naturally consider it to be a rightful privilege of Englishmen to be tried by their countrymen, quite as much as many privileges which they (the Natives of India) enjoy under our rule in respect to their caste and customs, to which due deference is paid by Government.

For the foregoing reasons, I consider it unadvisable to pass the Bill, which is a piece of sentimental legislation, into law.

I have, &c.

(Signed) H. M. S. MAGRATH, Major.

LETTER from the Subahdár, Mercára Taluq, to COMMISSIONER, Coorg.

IN acknowledging the receipt of your docket No. 22—16 of the 4th April, 1883, I have the honour to submit the following.

I am of opinion that the Bill, however desirable it may be to remove an existing anomaly, will prove in the end very mischievous, and create a serious ill-feeling between Natives and Europeans.

As far as my experience goes, I think the amendment is really unnecessary, the time not having come for an Act so liberal in its provisions. Matters now go on well, and no demand has been made for the change by the community at large. As it is, I feel that Native officials have no reason to complain, as we are empowered to dispose of civil cases in which Europeans appear before us; and it will do us no real good if we are called upon to perform the invidious task of punishing Europeans, while it will endanger the kindly feeling which should subsist between the European and the Natives of the country, and which I have endeavoured throughout my long official career to promote.

I must not be misunderstood in my opposition to the Bill. I am proud to say that pure Natives of India have proved themselves, both morally and socially, capable of filling with credit some of the highest and most responsible posts in India, and there is no doubt that there are many others who would do justice to their appointments as magistrates. What I mean is that the Bill is uncalled for, and has been thrust upon the Europeans contrary to their wishes, and is therefore certainly to be deprecated.

I have, &c.

(Signed) K. GANAPATI.

LETTER from the HONORARY SECRETARY, Coorg Planters' Association, to COMMISSIONER, Coorg, dated 22nd April 1883.

I HAVE the honour, on behalf of this Association, to acknowledge the receipt of your docket No. 19—5, dated 4th instant, enclosing a copy of the Bill to amend the Code of Criminal Procedure so far as it relates to the exercise of jurisdiction of Natives over European subjects, and asking for an expression of our opinion on the same, for transmission to the Chief Commissioner of Coorg.

2. The large and influential meetings held at Ammatti in the south, and here at Mercára in the north, were unanimous in their protest against the injustice of this Bill, and there is hardly a European, I believe, in the province who has not signed the Madras memorial protesting against it.

3. Our reasons for the same were given at length in the speeches made at the meeting and printed in the *Madras Mail* of 2nd instant.

(1) We are of opinion that this Bill, which we consider is unnecessary and uncalled for by either Natives or Europeans, and which the Government have unwisely proposed for the sake of two or three Bengal Native gentlemen, will deprive us of the only right and privilege which we Europeans in India enjoy, and would place our lives and liberties at the mercy of Native magistrates, who are almost totally ignorant of our ways and habits of life.

(2) There is hardly a single class amongst the Natives of India that has not some particular custom or right preserved to it by law; and why are we

to be deprived of the only one that we as Europeans possess, and which we maintain has far more reason for its continuation, at least for many years, than any the Natives have?

(3) There is not another colony or foreign station where Europeans are domiciled that does not maintain its right to have all European subjects tried by their own countrymen, and will not permit their being handed over to Native courts; and we protest against this just and reasonable law being abolished in our case.

(4) Here in this province, where there are so many Europeans, this Act, if passed, would bear particularly hard. So long as there is an European judge who knows our ways and habits, and can sift carefully the false evidence brought forward, the Natives are careful about bringing forward false accusations; but with a Native judge a fellow-countryman to appear before, all this would be changed, and false charges would be multiplied a hundred-fold.

For every little petty spite or trivial blow, supported by any number of false witnesses, we should be had up, and, with only a Native magistrate to judge between us, we maintain that our liberties, and perhaps our lives, would often be falsely sworn away.

(5) This Act, if passed, will, we feel assured, be most prejudicial to the good feeling which at present exists between the two classes, and will be the death-blow to the welfare and prosperity of the province.

Hitherto, although living in a foreign land, we have felt that we were sure of a fair and impartial trial, but, with this taken from us, there will be few who care to choose this country for their home when there are so many other lands where an Englishman, though an alien, may yet feel that he has this much-prized privilege of being tried by his countrymen still preserved to him.

4. We beg, in conclusion, to thank the late Acting Chief Commissioner of Coorg for his earnest and manly protest on behalf of this province against this proposed Bill, and we trust that Sir James Gordon will also continue to urge on our behalf the inexpediency of this Bill, which is unanimously condemned by the whole province.

I have, &c.
(Signed) G. R. EVANS,

LETTER from the ASSISTANT COMMISSIONER and the SUBAHDÁR, Yedenalknad Taluq, to COMMISSIONER, Coorg.—(No. 10, dated 17th April 1883).

WE have the honour to acknowledge the receipt of your docket No. 20—6 of the 4th April 1883, and its enclosure.

We have very carefully considered the provisions of the Bill, with Statement of Objects and Reasons, and we beg to submit that the Bill, does by its provisions no doubt remove an existing anomaly, and that, all things considered, it is such a measure as should be passed into law.

We cannot see any objection to the Bill, and we cannot conceive what legal and valid reasons can be possibly adduced against the amendment proposed to be effected thereby.

Europeans and Natives of every class and creed are, without distinction of class or race, all equally subjects of Her Majesty the Empress of India.

Under a liberal Government, Natives have qualified themselves to be considered eligible to fill most responsible positions. Indeed, Natives have long been appointed to seats on the bench of the High Courts in the several Presidencies, and of late they have also been considered eligible for appointments in the much-coveted and jealously-guarded Covenanted Civil Service of India. And, further, there are numerous Natives who are called to the Bar, and others who fill most responsible offices under the Government in all parts of India.

In the Presidency-towns, Natives as magistrates have jurisdiction over European British subjects, and hitherto no objection has been urged or exception taken to such powers being exercised by such Native magistrates.

We are, therefore, of opinion that the Bill should be passed into law, for the Government of India and the several local governments in the judicial

departments would have the remedy, if any, in their own hands in the conferment of the powers on Native magistrates. We assume, that only such magistrates who are duly qualified as magistrates empowered as is contemplated by the provisions of the Bill now before the Legislative Council of India. (*Sic.*)

We have, &c.
(Signed) C. SOOBIAH.
" N. MONAPPA.

From the Rev. H. A. KAUNDINYA to COMMISSIONER, Coorg, dated 17th April 1883.

I HAVE the honour to acknowledge the receipt of your communication of the 4th of April, together with a copy of the Bill to amend the Code of Criminal Procedure, &c., forwarded to me for my opinion.

At a time when almost all British-born subjects of Her Majesty the Empress of India consider it their duty to protest against the amendment, it is not a pleasant thing to be found among those that are constrained to approve of the measure. Having been educated in Europe, and having married a German, all my children also receiving instruction and education in Europe, I can, though a pure Native of India, fully enter into the feelings, and understand the fears and apprehensions, of my European fellow-subjects. On the other hand, I must not forget that mere sentimentality ought not to be allowed to override calm thought and the demands of justice and equity.

There are, according to the amendment, four classes on whom the exercise of jurisdiction over European British subjects is to be conferred. It is my humble opinion that no exception can be taken to the first, second, and fourth of them; but I doubt whether all the Assistant Commissioners are up to the mark. If, on the other hand, those Assistant Commissioners only are considered eligible for the exercise of the proposed jurisdiction that have been recommended thereto by the Commissioners of such districts, no inconvenience or injustice need be feared.

One thing strikes me as peculiarly anomalous. The Kaffirs and Zulus at the Cape Colony, the Maories of New Zealand, the Negroes of other Colonies, are to be looked upon as British-born subjects, while the people of British India are not to be considered as such. Any British-born Maori, Kaffir, or Negro may any day become a judge or magistrate in India, and exercise such jurisdiction not only over the people of India, but also over all European-born subjects, while such a British-born subject himself must not be under the jurisdiction of a judge or magistrate of the first class, if a Native of India, though the latter may be a first-class nobleman. I here allude to the law as it stands, though in practice this may not happen for a long time yet.

Under the wise laws introduced into India by the British Government, under the vigilant and prudent control exercised by the higher over the lower courts, and with the great strides made in education and in the development of administrative capacities, it may now be truly said of the higher grades of educated Natives of India that they can honourably stand comparison with men of European nationalities of similar grades and standing.

But one thing must not be overlooked. The state of morality certainly stands lower in India than in England. I would, therefore, raise my voice and say to our rulers—*festina lente*; let only those have this authority bestowed on them who are really fit for the work.

I have, &c.
(Signed) H. A. KAUNDINYA.

No. 25.

LETTER from the RESIDENT, Haidarábád, to SECRETARY to GOVERNMENT of INDIA, Legislative Department.—(No. 301, dated July 13, 1883).

IN reply to your Letter No. 33C. of the 17th March 1883, I have the honour to submit the opinions called for from the Commissioner and other officers of the Haidarábád Assigned Districts, concerning the proposed Bill for the amendment of the Code of Criminal Procedure, so far as it relates to the exercise of jurisdiction over European British subjects.

2. The Bill as it now stands would allow to the Governor General in Council and local governments the power of conferring upon Native members of the Covenanted Civil Service, or upon Natives selected for the Civil Service under 33 Vict. cap. 3, or upon Native Assistant Commissioners in non-regulation provinces or upon Native cantonment magistrates the powers hitherto reserved to European British subjects as justice of the peace. These consist in hearing criminal charges brought against European British subjects and Americans, and in disposing of them according to the powers defined in sections 446-449 of the Code. The European would thus become liable to a sentence of three months, imprisonment and 1,000 rupees fine, or to be committed to the Court of Sessions or the High Court by a Native judge. By a further provision section 450 is abrogated, and he would therefore be also liable to a sentence of one year and unlimited fine at the hands of a Native sessions judge; but in this last case, the aid of assessors, not less than half of whom must on his requisition be Europeans, would be required.

3. The Bill also limits the appointment of Justice of the Peace to certain classes, and thus has the effect of disenfranchising all European extra Assistant Commissioners and others who have been hitherto not unfrequently gazetted to these functions. This has probably been done in order to place the Native extra Assistant Commissioner or Deputy Collector in the same position as the European officer of the same grade in the service, both being equally disqualified.

4. The object of the Bill is stated to be the settlement of this particular "question of jurisdiction in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race-distinctions." I would express my full sympathy with this object so far as the distinctions alluded to are based on ignorant prejudice against blood, creed, or colour. But, if differences that are the result of national characteristics, special training, and varying opportunities for obtaining knowledge of particular subjects are included in the term, it is obvious that such disqualifications as may be held naturally to follow from these differences are recognised in the daily life of men all over the world, and that it is impossible to abolish them except on paper. It would be most unjust to ascribe the opposition which this proposal has encountered solely or even generally to any blind or unreasoning assertion of a race-superiority. It is due to a profound sense that, large as the acquirements of many Native gentlemen have become, our experience has not yet proved them to be endowed with the qualities most essential for the administration of criminal justice between European and European, or between Europeans on one side and Natives on the other.

5. The knowledge of law and subtlety in its application, and a colloquial command of the English tongue, are accomplishments in which many Indian magistrates are acknowledged masters. But it is felt, and truly felt, that these are not the main requisites needed for the disposal of cases likely to be brought before them under the provisions of the new Bill. The qualities most necessary for this purpose are (1) a sufficient knowledge of the temper, habits and character of both the parties in the case; and (2) the possession of that *nerve* which comes from a feeling that the judge possesses the confidence of both parties, and from holding a position which precludes any tendency either to arrogant self-assertion in one class of character or timidity in another.

6. It is hardly maintainable in argument that the Native gentlemen who are affected by this Bill can be gifted with the first of these attributes. It

is no disparagement upon their ability to say this, because they cannot possibly have had any opportunity of gaining the only experience that could confer it. Cases are happily too few in the interior for the proposed jurisdiction ever to furnish them with the means for its acquirements. The only manner in which this objection can be met is that which I have seen adopted in a very temperate speech by Sir Jamsetji Jeejeebhoy at a Bombay meeting in favour of the Bill. He urged, and I have seen it elsewhere urged, that in this respect the Englishman before a Native judge is not worse off than the Native before an European. But this comparison leaves wholly out of sight one most important distinction. The Englishman, both before and after these powers are granted to him, is devoting the best part of his life-time, and the whole of his working hours, towards the attainment of some degree of the requisite knowledge of the Native classes under his rule, whereas the native officer will probably not have more than a dozen cases before him in his whole career by which he can be helped towards the attainment of the same knowledge of the European. In the Presidency towns, where such offences are common, the Native magistrate may perhaps gain the necessary knowledge with comparative ease, just as the Englishman gains it by his work in the interior. But there is no such practice to enable the Native magistrate to acquire experience of the European in the Mufassal, and his previous training is not such as to supply the want.

7. As the degree of criminality attaching to an act is generally dependent on the intention or malice from which it has originated, I cannot wonder at the sensation which the proposal to place the power of drawing this inference in the hands of men who are ignorant of European character has caused in the European community.

8. Hardly less necessary than special knowledge is the possession of *nerve* in dealing with members of what is, in fact, and must long appear, the dominant race in India to the Native mind. There is probably no officer of old standing in the Civil Service who has not at some short period in his career been compelled to incur severe odium from his own countrymen in dealing justice between influential Englishmen and Native complainants. Knowing little of Bengal proper, the arguments against the Bill, which are derived apparently from the chance of connivance on the part of the Judge, with false charges, speak to me with no force, nor do I believe that Native justices of the peace would err, except through ignorance, in the entertainment of such charges. But in those parts of India which I have known, the risks and responsibility of dealing with criminal charges against Englishmen in India would have the strongest tendency to impair the soundness of their judgment.

9. The present agitation alone suffices to show how entirely destitute such officers would be of that power of inspiring confidence which is an essential condition of success in a court of justice. And, until it can be shown that this feeling is grounded on a false estimate of Native character in these two important points, or that this estimate is contradicted by our daily experience and by the probabilities of the case, I cannot think that the time has come for investing our Native officers with jurisdiction of this exceptional description.

10. How bitterly the withdrawal of what is deemed a British privilege will be resented is known to Government. If that privilege were based on nothing but the desire to uphold the prestige of the Englishman in the country, I should still hesitate to withdraw it, unless its revocation were demanded by administrative necessities, or by justice towards our Native subjects. But since, in the first place, I believe it to be founded on distinctions, not of race, but of aptitudes and qualifications resulting from the training and characteristics of different races; since, secondly, no practical inconvenience of any magnitude arises from its maintenance; and since, in the third place, no injustice to others (who were perfectly aware of the existing restriction when they entered their appointments) is involved, I can see no reason whatever for the introduction of the change.

11. It must be allowed, however, that the question of abandoning the Bill altogether, in the face of a public agitation against it, and as a piece of policy at the present moment, is beset with some difficulties. It is certain that to impose the Bill in its present shape on the English portion of the

population would be a violation of the most ordinary principles of liberal government. They have pronounced their opinion unmistakeably against it, and the mass of the people is unconcerned and uninterested in the matter, which only affects a small class desirous of a theoretical equalization. On the other hand, it may be said that the Government of India should not take any course that gives them the aspect of yielding to demonstrations against their measures; and it may also be urged that the principle of ultimate and potential advancement of Natives to these powers is one of too much importance to be sacrificed even in appearance and for a time.

12. On the whole, the most straightforward course appears to me to be the best. If the Government of India is now convinced that they were misled into the belief that "the time had come" for the measure, a frank admission of this error, if coupled with a strong assertion that the truth of the principle was still amply recognised, and that the time would come for its embodiment in a legislative Act, would be more likely to conciliate both sides to the quarrel and to allay irritation than the enactment of any piece of *prospective* legislation, which would in itself be one of the worst of precedents, and which would satisfy neither party.

I have, &c.
(Signed) J. G. CORDERY.

LETTER from the COMMISSIONER, Haidarabad Assigned Districts, to SECRETARY for BIRAR to RESIDENT, Haidarabad.—(No. 2934, dated 11th June 1883).

I HAVE the honour to submit my opinion on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, which was invited in your endorsement No. 165 of 4th April, and to enclose therewith the opinions of the Deputy Commissioners of Amraoti and Buldana, whom I consulted on the matter.

2. I purposely delayed submitting my observations on an earlier date (as the Government of India do not require a reply till the 13th July), in order to give myself the fullest opportunity of careful deliberation on the measure which has given rise to so much acrimonious discussion, and to profit by such expressions of calmer public opinion as might be elicited after the violence which characterised the early stages of the discussion had somewhat subsided.

3. The arguments put forward in support of the Bill appear to me to be briefly the following:—

- (1.) That it is expedient to remove the anomaly in the law which, while professing to treat all races and creeds impartially, excludes Europeans to a large extent from the jurisdiction of the ordinary courts of the country;
- (2.) That it is unfair to, and implies a slur on, the Native members of the Covenanted Civil Service to prohibit them from exercising a jurisdiction which all the European members of the service, even when their juniors, are qualified to exercise;
- (3.) That administrative inconvenience may be, and has been, experienced in consequence of this prohibition when Native civilians are or may be appointed as magistrates or judges to districts where there are many Europeans.

4. Of these three arguments, the two first appear to me to be principally, if not wholly, of a theoretical or sentimental nature; the latter only has a practical bearing.

The first or "anomaly" argument is, to my mind, sufficiently disposed of by the circumstance that a large number of other anomalies or special privileges in regard to practical exemption from certain general provisions of the law are still maintained in, and recognised by, the Code, which, if we regard only uniformity, would be as little defensible as the one now under discussion, and further that, even if the Code is amended as proposed, Europeans will still enjoy certain remaining privileges in regard to their treatment by criminal courts which are as anomalous as the particular privilege now proposed to be curtailed.

It appears to me to be obviously illogical to raise an objection to any specific exemption on the general ground of its being an anomaly, unless it be proposed simultaneously to abolish all distinctions and exemptions of all kinds and degrees.

5. The second or "want of confidence" argument does not appear to me to carry much weight or to bear very close investigation.

I am totally unable to see how the exemption of certain persons or classes from any particular tribunal can be held to be a grievance to that tribunal; neither can I see how a member of any service can say that a slur is cast upon him by the operation of rules which were in existence, and thoroughly well known, when he entered its ranks. Every Native who competed for an appointment in the Indian Civil Service was thoroughly aware that if he joined it he would not be competent to try Europeans except as a Presidency magistrate or a High Court judge.

Having accepted this condition, he cannot now complain of it as a grievance or a lowering him in the esteem of his fellow countrymen. If he thought such a limitation a slur and an indignity, he need not have subjected himself to the reproach.

6. I am, moreover, quite unable to sympathise with the sentiment that, if under the present provisions of the law a Native magistrate of a district should be obliged to refer a charge against an European to the joint magistrate for trial, as being himself incompetent by his nationality to entertain it, he should consider himself placed thereby in a derogatory position. It appears to me that, as a matter of procedure prescribed by law, the selection of the tribunal before which any particular class of offender should be tried must be as much a matter of absolute indifference to the person administering that law as any other item of procedure prescribed therein.

7. The third argument based on "convenience of administration" is alone, in my opinion, worthy of consideration; and, although I do not think a sufficiently strong case has been made out to show that on this ground a change in the law is urgently and immediately required, still I think that it is manifest to anyone taking a dispassionate view of the position that, by the admission of Natives into the Covenanted Civil Service and their consequent rise therein to become magistrates of districts and sessions judges, a change has clearly been brought about which must necessarily affect in an increasing degree the number of officials qualified to try offences by Europeans under the present law.

8. The question, therefore, which to my mind demanded a clear solution before any action towards amending the law could safely be recommended, was whether such an amount of administrative inconvenience had actually been felt hitherto, or was immediately to be apprehended, in regard to dealing with offences by Europeans, owing to such offences not being triable by Native officials, as to require some amendment of the law on this point.

9. I cannot find that the actual present existence of such a difficulty has been complained of or represented by any of the local governments, neither have any instances been adduced, as far as I can gather in any of the speeches in support of this Bill, establishing that such difficulty has been felt.

The two instances quoted, those of Messrs. Dutt and Tagore, do not seem to me to establish an administrative difficulty of much magnitude.

In the case of Mr. Dutt, it is urged that he could not be sent to Dacca as magistrate, on account of the probable influx of Europeans consequent on the construction of the new railway in the neighbourhood.

And the case of Mr. Tagore is very similar, it being urged that, owing to the possible construction of a railway to the station where he is at present posted as judge, cases may arise which he cannot deal with.

The administrative difficulty in each case is easily solved, as it was in the case of Mr. Dutt, by sending the officer in question to some other station. It has not been asserted, as far as I am aware, that any local government has not, at present at least, an abundant supply of qualified officers available for employment in places where offences by Europeans are likely to occur; and I totally deny that Mr. Dutt has any inherent right to be sent to

Dacca as magistrate, or Mr. Tagore to remain as judge at Kárwár, if it appears to the local government that their services can be more usefully employed elsewhere.

10. Still I admit that, as more of the Natives now in the Covenanted Service attain these higher posts, the difficulty may occasionally, though rarely, arise. It seems, indeed, almost absolutely impossible for the difficulty to be felt anywhere except in Bengal, where six out of the total number of nine covenanted civilians now in the service are posted. There is only one such officer (a very junior one) in the North-west, and there are two in the Bombay Presidency. There are none anywhere else.

It seems, therefore, very questionable whether any measures of this kind are now required at all. I think, however, the circumstances fully justify a discussion of the alteration in the law, which it might be possible and advisable to introduce should the difficulty appear to warrant such alteration.

11. Some such alteration may indeed be advisable in the interests of Europeans themselves, as it would in some cases be conceivably a considerable hardship to a European charged with some petty offence to be sent off to a distant station with his witnesses when he might be quite willing that the charge should be disposed of by the resident Native magistrate.

12. But in discussing such proposals I should attach the fullest weight to the fact that the present exemptions accorded by the law to Europeans in regard to their subjection to the criminal courts are esteemed by them, whether reasonably or not, as the most highly valued privileges and safeguards, and should hold that, unless some special reasons of the gravest political or administrative importance can be established for such a course, it would be altogether unfair as well as impolitic to curtail or interfere with them.

Moreover, I think it distinctly advisable on political grounds to retain, at any rate for the present, these exemptions and limitations as the special privilege of the ruling race.

13. In devising, therefore, any means of meeting the difficulty of dealing with offences by Europeans at places where there may be no resident official qualified for the purpose, I should be most careful to preserve the spirit of these privileges as far as practicable.

In this view I do not see that there could be much objection in allowing a sessions judge, when a Native, to preside over the trial of a European, provided that the jury or assessors consisted exclusively of Europeans, or if a mixed body of jurors or assessors were retained, then one or more European officers should be associated with the Native judge on the bench.

Similarly, in cases of trial before a magistrate, I would allow a bench to be formed, over which the Native magistrate might preside, provided the majority of the bench consisted of Europeans.

And I would further, if circumstances did not admit of the formation of a jury, body of assessors or bench constituted as above, allow the European accused to have the option of waving his privilege and accepting the unaided jurisdiction of the Native officer.

14. I do not at all proffer these suggestions as the best possible solution of the difficulty, but merely as indicating the direction in which, in my opinion, the law might with advantage be amended should circumstances be found to require it.

15. There is also, in my opinion, another serious defect in the present Bill, namely, that, while circumstances seem to indicate the necessity of providing more officials qualified to deal with European offenders, it rejects the services of that valuable class of experienced uncovenanted officers who have been hitherto entrusted with the commission of the peace, and who have discharged their duties in that capacity, as far as I am aware, most satisfactorily.

16. Altogether, I think the Bill as at present drawn is open to many most serious objections, and should be withdrawn, a measure being substituted framed on the lines indicated above, if it be sufficiently shown that the "time has come" for such alteration of the law on the grounds of administrative convenience.

The storm of opposition which the Bill has excited is due, in my opinion,

principally to its being based on theoretic and sentimental grounds, rather on the necessities of practical administration. A reasonable measure framed only to provide for these necessities would, I have little doubt, meet with ready acceptance and approbation.

I have, &c.
(Signed) S. O. B. RIDSDALE.

LETTER from the DEPUTY COMMISSIONER, Buldáná District, to Commissioner, Haiderabad Assigned Districts.—(No. 1070, dated 2nd May 1883).

I HAVE the honour to return the papers, alluded to in your letter No. 1833, dated 12th April 1883, on the subject of the exercise of jurisdiction over European British subjects by Natives.

2. When I first had before me the proposal which this Bill embodies, it was in a very different shape. A Native gentleman of the Civil Service had brought to notice that there was an anomaly in his non-possession of the jurisdiction over European British subjects which pertained to the European members of his service. I expressed the opinion that there was an anomaly and that it should be remedied, or that an understanding should be arrived at under which Native members of the Civil Service should not hold office as sessions judges or district magistrates. I was further of opinion that any experimental alteration of the law should apply alone to Native members of the Civil Service who had received a training in England.

3. I was scarcely prepared for the determination of the Government of India to remove from the Code, at once and completely, every judicial disqualification which is based merely on race distinctions, and thereby withdraw from Europeans in India one of their most-cherished privileges.

4. I was not prepared to be told that to withdraw this privilege would be an amendment of the Code in so far as it relates to the exercise of jurisdiction over Europeans. I cannot admit that the Bill will improve the existing law in any particular. I am convinced that, if it becomes law, it will work serious mischief.

5. In the course of a service in India which has now extended over a third of a century, and which has for by far the greater part been spent in the performance of civil duties, I have never heard a Native magistrate complain that the law did not give him jurisdiction over Europeans. I will go further and assert that I have never heard of a Native magistrate so complaining until Mr. Gupta brought himself to notice in that way.

6. I am nauseated with the arguments *pro* and *con* the Bill contained in speeches and newspaper articles. I wish to add none to those which were so ably laid before the Council of the Governor-General of India by official and non-official gentlemen who take the same view of the Bill as I do.

7. I consider the Bill unnecessary, and a great mistake. It has already worked incalculable mischief; it has set race against race; it will take years to undo what has been done. We shall have Europeans running a tilt against every exclusive privilege held by Natives; the peace of the country will be disturbed.

8. Is it not rather an anomaly to ask the European to submit to the jurisdiction of Native magistrates when we all know that the Hindu hates to be tried by the Muhammadan (or *vice versa*) if his accuser is of the same race as the magistrate; and when we all know that this hatred is begotten of a distrust that the magistrate will be strong enough to do justice, although a just decision may give offence to the local community of his own race. It is not enough in India to be just; one must be believed to be just at all risks. Is it not well known that district magistrates are constantly asked to transfer cases to their own files from those of Native magistrates for reasons which are not flattering to those magistrates? Do District magistrates never receive from Native gentlemen, who are special or honorary magistrates, requests to be spared the trial of particular cases lest they should incur the enmity of the accused or accuser, or a caste? Do Natives ever place implicit confidence in one another? Is there not that wretched word “*adawut*” perpetually being rung in our ears? Is it not

freely used to account for a decision which a Native judicial officer may rightly have made and which some of his caste may not approve of? Is the Native magistrate strong enough to face all this in a quiet place in the Mufassal, where he has no backers in the shape of counsel, or newspaper editors or an educated Native public to take his part? The pettiest magisterial case in which a European may be involved will become a question taken up by a whole caste, and, if the magistrate belongs to that caste, no one will believe in the honesty of the decision he may give. There are disqualifications for certain judicial duties which legislation cannot remove, though it may be good policy to ignore their existence when arguing on this Bill. It has been said that this Bill is a final measure; does any European forget that Governments are not bound by the declared policy of preceding Governments? Is not this Bill now looked on generally as the introduction of the thin end of the wedge?

9. I humbly hope that the Viceroy, who has committed himself to no decided opinion as yet, will, when he receives the opinions of those who have been consulted, see his way to the withdrawal of the Bill and thus restore quiet to India, though I fear that to do this will be a work of time.

I have, &c.

(Signed) H. C. MENZIES, Colonel.

LETTER from the DEPUTY COMMISSIONER, Amraoti District, to Commissioner, Haidarabad Assigned Districts.—(No. 266, dated 27th April 1883).

WITH reference to your No. 1832, dated 12th April, I have the honour to state that I believe that I have already expressed my opinion on the subject referred to.

2. My opinion was, I think, that I could see no objection to Native members of the Covenanted Civil Service being appointed justices of the peace, nor in the abstract do I see any such objection now; but the recent agitation which has taken place has, I think, raised the question whether it is worth while to make the alteration proposed in the law in the face of such a very strong opposition as has been developed.

3. It has been admitted, I think, by very high authorities that there is a real danger for Europeans living alone in remote districts and parts of districts of having their cases tried by persons not conversant with their modes of life, and cases might often occur where a Native magistrate would have to try an European for an offence against an European, in which case the danger of the judge misunderstanding the case would be greater than in cases between Europeans and Natives.

4. Altogether, I am inclined to doubt the policy of making the alteration.

I have, &c.

(Signed) R. BULLOCK, Major.

LETTER from the JUDICIAL COMMISSIONER, Haidarabad Assigned Districts to SECRETARY for BIRAR to RESIDENT, Haidarabad.—(No. 1871, dated 20th June 1883).

I HAVE the honour to acknowledge the receipt of your No. 166J., dated the 4th April last, and to report as follows:—

2. I have been absent from India while the discussion in regard to this Bill has been going on, and since my return I have not been able to ascertain the feelings of the non-official European British subjects in Birar on the contemplated legislation. There are, however, compared with other parts of India, very few Europeans in Birar, and a portion of these only are British subjects. I am therefore only able to give my own personal thoughts on the subject for what they may be thought worth.

3. The object of the proposed Bill is (1) to remedy an admitted anomaly, and (2) to remove an invidious distinction which might cause practical inconvenience to the administration of justice.

4. In regard to the first point, it is true that there is an anomaly; but is this the only anomaly in our rule in India? Is not our presence here at all,

a mere handful of foreigners ruling millions of the Natives of India, an anomaly which we cannot account for and cannot remedy? And as we are here, is it to be wondered at that our countrymen, whose lot is cast in the East not as rulers but as dwellers under our Government, should wish to be tried by their own countrymen and not by Natives?

5. I have in the course of my long service had opportunities of hearing the opinions of Europeans (British and others), as well as of Natives, on the administration of justice by both European and Native judges. I am bound to say that I have heard remarks not altogether complimentary to the European, but I have never heard but one desire on the part of European merchants; and that is, that any criminal cases in which they might be concerned might be tried by the British magistrates. Similarly, I have been requested, not once or twice, but frequently, by Natives to transfer cases, civil and criminal, from courts presided over by Natives to courts in which justice was administered by European officers. Asked the reason for their application, the usual reply has been that they can trust the European officer to do his best, and what he honestly believes to be right and proper; though, with all the difficulties with which he is surrounded as a foreigner, differing in creed and colour from the Natives, it must, I think, be admitted that many errors are committed; still the Natives have confidence in the European, which they have not in the Native officials.

6. I hope it will not be considered that these are my sentiments. I am merely stating sentiments expressed to me by Natives. I am not considering whether the Natives have good grounds for their sentiments, or whether they have made their statements to me merely with a view to flattering me as an official set in authority over them. I do not forget either that the Native officials, the subject of the above remarks, were not of the enlightened class which it is proposed to invest with jurisdiction over European British-born subjects.

If, however, the Natives have this preference for trial by Europeans, can we be astonished at the excitement which has been aroused among the European British-born population which may be located in various outlying stations of British India at the bare prospect of being tried by Natives, however distinguished a position these may hold in the Civil Service of India?

7. I do not mean to say that this agitation on the part of Europeans is altogether reasonable, but it is evidently very real, and, as such, is worthy of very careful consideration before it is determined to subject British European-born subjects to the jurisdiction of Native magistrates. I have seen it stated that the number of Natives who would be qualified to exercise the jurisdiction which it is proposed to confer on them would for many years to come be extremely limited; and this is no doubt true. But if, as I believe it to be the excitement is very real, it must be the principle involved in the proposed measure which has aroused it, and nothing else.

8. As to any practical inconvenience which may be felt from leaving matters as they are, I would ask whether in past years, since Act X. of 1872 became law, any practical inconvenience has ever been experienced from the existing state of things. I have never heard that it has, and, if so, why legislate to remedy what may be, and is, an undoubted anomaly, but which in every day life does not interfere with the comfort and well being of the Native population generally. Section 445 of Act X. of 1882 provides, I think, for the disposal of any complaints made by Natives against Europeans in which immediate action is necessary.

My *locum tenens* called for the opinions of certain officers which I forward in original.

My opinion is that, if Government can find any way of receding from the position it has taken up in regard to the Bill, it would be advisable, at all events for a time, to abstain from proceeding with the Bill.

I have, &c.

(Signed) J. G. BELL, Colonel.

LETTER from DEPUTY COMMISSIONER, Akola District, to JUDICIAL COMMISSIONER, Haiderabad Assigned Districts.—(No. 581C.D., dated 21st April 1883).

I HAVE been requested to record my opinion on the Bill for the amendment of the Code of Criminal Procedure of 1882, &c., and, in reply, have the honour to state as follows:—

2. The general opinion among the Europeans of this district is very strongly against the Bill.

3. Few of those with whom I have talked over the subject have thought over the matter carefully; nevertheless, their opinions against the Bill are very strong, and all the more difficult to convince or argue with, because their objections to it are unreasonable.

4. Analysing, however, their feelings for them, it seems to them that the English Government are giving up, point after point, without a proportionate improvement on the part of the people of India as a whole to understand or appreciate, much less benefit by, what has been already conceded to them.

5. Such hurried concessions they consider dangerous to our rule, and I am not prepared to say that they are wrong.

6. This feeling of fear as to the result of such concessions naturally cannot be understood either by the English people or Parliament; therefore, the idea prevails that referring such a question to Parliament was but a farce, as the Government of India could almost as a certainty count on the result.

7. Unless the British Government is prepared to eat its words and gainsay its promises, such a Bill as the present must sooner or later be introduced, and it was most unfortunate that the advisers of Government did not subject the Bill to public criticism before bringing it before the Council.

8. The Bill can still be introduced and passed, provided a clause be appended that it is not to become law in any particular province or district unless made specially applicable by a notification in the "Gazette of India."

9. I think, further, that Native magistrates, before being invested with powers of justice of the peace, should have experience given them by acting for one or more years as police magistrates of the Presidency towns.

10. Such experience would show them the style of offence which the British subject is most likely to commit.

11. The present Bill proves but too clearly that the Government of India have in this instance wholly misapprehended public feeling, and lost touch, as it were, not only of the peoples of India, but also of their own countrymen.

12. I recommend that the Bill be persevered in and passed, but that it be left to local governments to make it applicable to portions of their territory as they may consider it advisable.

13. In conclusion, I would urge the necessity which exists for going slower than at present.

If our system of government were adopted by several European nations, as Spain, &c., revolutions would be the result. What then can we expect from the Natives of Hindustan, the bulk of whom know nothing and care less for our liberal laws and institutions.

I have, &c.

(Signed) J. FITZGERALD, Lieut.-Colonel.

LETTER from the DEPUTY COMMISSIONER, Basim District, to JUDICIAL COMMISSIONER, Haiderabad Assigned Districts.—(No. 1465, dated 23rd April, 1883).

IN reply to your endorsement No. 1197, dated 17th April 1883, I beg to observe that the object of the Bill appears to be to introduce certain changes in order to reduce certain anomalies in the law. The Natives enjoy many privileges which would not be accorded to Europeans. A Native lady of a certain class would be exempted from appearance in court as a witness, whereas her European sister, of whatever rank would not enjoy a similar

privilege. Some time ago a magistrate considered that it was absolutely necessary for the ends of justice that a Native lady should appear and be examined as a witness, but the High Court overruled the magistrate's order, and directed that the Native lady should be examined by commission (*vide* case in matter of petition of Hurro Soondery Chowdrain, Indian Law Reports, Calcutta series, Volume IV., page 20).

2. It is necessary that a Native soldier be tried by a first class magistrate, however petty his offence may be.

3. These and such like anomalies do exist, and it is not considered desirable to remove them.

4. Taking the Natives generally, the great majority do not consider it a matter of pride to be considered British subjects, and there can be no doubt that there is still a great gulf between the races. It should, in my opinion, be the object of Government to reduce this gulf and minimise all tendencies to antagonism. The proposed Bill appears to be rather widening this gulf and exciting this antagonism; and, under the circumstances, it would appear advisable to postpone the passing of the proposed amendment, and, after due consideration, I am inclined to agree with Mr. Howell's views on this subject as published in the papers. As quoted by him—"The privilege as to jurisdiction is the privilege of the prisoner, not the privilege of the judge. The European had an objection to be tried by the Native. Considering the position in which he stood, the question was, whether you would put him in a position in which he did not at present stand. You placed no slight upon the Native by saying that he could only try a man of his own race. What was there against the feelings of the Native in saying that? Why should any one feel a slight because he was told that this particular man was to be tried in a particular way? On the other hand, it was a feeling, and not an unnatural one, that a man should wish to be tried by his own countrymen."

5. I do not ever remember an application having been made by a Native to transfer a case from a court presided over by an European to one presided over by a Native; but I have known of applications by Natives to get cases transferred from courts presided over by Natives to courts presided over by Europeans.

6. Under the present Code, section 445, provision is made for emergencies, and any Native magistrate can take cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence committed by another person, the process to be returnable before a magistrate having jurisdiction to inquire into or try the case. Consequently, no inconvenience is likely to occur even after an increase in the number of members of the Civil Service who may be Natives of India. Some of these may have been educated in England, and might be cultivated gentlemen and quite worthy of the powers in question; still, as it is likely to increase race antagonism if these powers are so granted, it appears hardly advisable at present to remove this particular race distinction.

7. At present, as stated above, there is no reason why a Native should look upon this distinction as a slight; but, if the Bill is passed, there would sure to be urgent appeals on the part of European accused to get cases transferred from courts presided over by Native magistrates, and this would then raise a slight.

8. It appears to me that it would be much wiser to allow a little time for the European public to become accustomed to the Native magistrates who will enter the service after a thorough European education, and who will probably have become accustomed to European modes of thought, and show themselves to be cultivated gentlemen with undoubted principles of honour. It is probable that after a time the intense prejudice which clearly exists will wear away, and later on it will be easier to clear away not only this but other race distinctions.

9. If, however, it should be considered absolutely necessary to pass the Bill, I certainly agree with Colonel Menzies, Deputy Commissioner, Buldáná, that "the experiment should be made under restricted conditions, and the

“ exercise of jurisdiction over Europeans confined to Native civilians who
“ have been trained in England.”

I have, &c.
(Signed) D. W. LAUGHTON, Colonel.

LETTER from the OFFICIATING DEPUTY COMMISSIONER, Wun District, to
JUDICIAL COMMISSIONER, Haidarábád Assigned Districts.—(No. 819-
108, dated 25th April 1883).

I HAVE the honour, in accordance with your endorsement, No. 1199 of
17th April 1883, to forward my opinion on the provisions of the Bill to amend
the Code of Criminal Procedure, 1882, so far as it relates to the exercise
of jurisdiction over European British subjects.

2. It has been said in favour of the Bill that its object is to do away with
an anomaly. Yet, of all the privileges which European British subjects
possess, the limitations on the sentences which may be inflicted by the
judge, the right to trial by a mixed jury or by mixed assessors, all the
special rights of appeal, have been left untouched, whilst the privilege
of being tried by a European British subject is alone attacked. And why?
Has it ever been found that this privilege has caused any failure of justice?
Has there been any outcry against the injustice or inexpediency of this
privilege? Has any necessity been shown for altering the law on this
point? Not at all; but because one Native has risen to the rank of judge
in the Bengal Civil Service, and he does not like to feel that he has no
criminal jurisdiction over European British subjects whilst his equals in the
service have the power. For one man who has, and on the chance of four
or five other Natives in the Civil Service reaching, the same position; from
a mistaken sentiment of justice and equality; to please the platform cry
of India for the Indians; to acquire a cheap popularity with the Natives,
the most ancient and most highly prized privilege of the ruling race is to be
taken away.

3. Again, it is urged in favour of the Bill that Presidency magistrates,
whether Natives of India or not, can try and commit for trial any European
British subject, and, if Native magistrates are fit to exercise such powers
in the Presidency towns, then they are equally fit to exercise them in the
Mafassal. But the circumstances of the two cases are not similar. In the
Presidency towns public opinion and the reports of cases in the daily papers
are safeguards. An accused can always find European professional assistance,
and an appeal or interim application to the High Court can be made at
once, and, above all, there are proper and suitable buildings for European
prisoners; whereas in the Mafassal, an English lady or gentleman might
suffer imprisonment in a common Native jail for many days, perhaps weeks,
before an appeal could be carried to the High Court, heard and the orders
of the High Court brought back. Meantime, the prisoner may have died,
and, if only injured in health and reputation, what compensation can he
get?

4. Again, it has been said in favour of the Bill that no person is exempt
from the jurisdiction of a civil court presided over by a Native judge by
reason of his being a European British subject. Why therefore should an
European British subject be exempt from the jurisdiction of Native judges'
criminal courts? But here again the comparison is not fair; because,
whatever the judgment of the Civil Court may be, execution can be stayed
pending appeal, and, even during the continuance of the suit, the personal
liberty of the subject is not affected. It is a very different matter for the
European British subject whether his personal liberty is in question, or
whether it is only his pocket and purse which are likely to suffer.

5. I do not say that there are not many Native judges from whom
a European British subject would receive justice; but no Native criminal
tribunal does command the confidence of the non-official Europeans in this
country.

False evidence is so easily obtained, and false complaints are so common, that the safeguard provided by the privilege which it is proposed to take away is not so much a privilege as a necessity.

6. I consider that if the proposed amendment be passed, the greatest injury to English interests in India will be caused, and most lamentable results will arise. There is no necessity whatever for the alteration, and, if the only object of the introduction of this Bill is to provide for the impartial and effectual administration of justice, the sooner it is withdrawn the better.

I have, &c.
(Signed) A. ELLIOTT.

LETTER from the ASSISTANT COMMISSIONER, Buldáná, to JUDICIAL COMMISSIONER, Haidarábád Assigned Districts.—(Dated 15th May, 1883).

WITH reference to your Memorandum, No. 1201 of the 17th ultimo, forwarding a copy of the Bill for the amendment of the Code of Criminal Procedure, 1832, and asking for an opinion on its provisions, I have the honour to state that I am of opinion that the Bill should not be proceeded with. It is not necessary for me to repeat again all the arguments that have so often been repeated by the opponents of the Bill; but, in a few words, I think that a measure so exceedingly unpopular with a large section of the community, as this one is, should not be passed except under pressure of necessity; and there seems to be no urgent necessity for the proposed alteration of the law at present, even on the score of administrative inconvenience.

Our Native fellow-subjects generally have not called out for the change; they are contented, I believe, with the present state of things as being the natural outcome of our position in the country; they see no anomalies in race-distinctions, and they prefer being tried by Europeans themselves, and I do not believe that they will feel any real gratitude for the extension of the jurisdiction over Europeans to magistrates of Native race.

On the other hand, there is no question of the reality of the feelings of dislike and dismay with which the Bill has inspired the European community, and I believe there is reason for some of the fears they so freely express; for instance, that false accusations will be much more largely employed than before as weapons of offence against the lonely planter in the far Mufassal and will be harder to combat; and that, where liberty is supposed to be less secure, European capital and enterprise may possibly be to some extent diverted from the country, to its great loss.

There is, unfortunately, no doubt that the introduction of the Bill has done great harm in giving rise to bitter feelings of race-hostility, and there is every reason to fear that, if passed, it will do infinitely more in the same direction. And this being the case, and the benefits expected for the Native community being so very small, and the disadvantages to the European community so great, I think, with deference, that it would be advisable and politic to abandon the Bill.

I have, &c.
(Signed) R. D. HARE.

No. 26.

MEMORIAL from MEMBERS of the CALCUTTA TRADES' ASSOCIATION,
to SECRETARY to GOVERNMENT of INDIA, LEGISLATIVE
DEPARTMENT, dated 5th March, 1883.

WE have the honour to wait upon you with the accompanying copy of the Resolutions adopted at a general meeting, held on the 1st instant, of the Calcutta Trades' Association, in regard to the proposed amendment of the Code of Criminal Procedure, and to request that you will be so good as to lay the Resolutions before his Excellency the Viceroy and Governor General in Council.

(Signed) F. and C. OSLER, and 58 others.

Enclosure in above.

MINUTES of an EXTRAORDINARY GENERAL MEETING of the MEMBERS of the CALCUTTA TRADES' ASSOCIATION, held at the Dalhousie Institute on Thursday, the 1st March, 1883.

PRESENT :

- Mr. H. Pratt, of the firm of F. & C. Osler, Master of the Association, in the chair.
- „ D. J. Zemin, of the firm of Lewis, Stewart & Co.
Honourable J. E. Caithness, of the firm of Cooke & Kelvey.
Mr. George Irving, of the firm of T. E. Thompson & Co.
- „ A. H. Wallis, of the firm of Manton & Co.
„ J. G. Womack, of the firm of Harman & Co.
„ R. Y. Remfry, of the firm of Hamilton & Co.
„ T. W. Spink, of the firm of Thacker, Spink & Co.
„ C. F. Larmour, of the firm of C. Lazarus & Co.
„ E. Read, of the firm of Dykes & Co.
„ A. Summers of the firm of Watson & Summers.
„ H. H. Hopkins, of the firm of Bathgate & Co.
„ A. J. Bridge, of the firm of G. F. Kelner & Co.
„ E. G. Cuming, of the firm of James Monteith & Co.
„ James Murray, of the firm of James Murray.
„ A. E. Keell, of the firm Francis, Harrison, Hathaway & Co.
„ J. H. Herbert, of the firm of Llewelyn & Co.
„ L. Richards, of the firm of Francis, Ramsay & Co.
„ H. W. Hallett, of the firm of Watts & Co.
„ D. M. Traill, of the firm of D. M. Traill.
„ E. A. Dukes, Secretary, W. Newman & Co., Limited.
„ A. Acton, Secretary, Central Press Co., Limited.
„ R. J. Carbery, Secretary, R. Scott, Thomson & Co., Limited.

The notice convening the meeting having been read, it was proposed by Mr. D. J. Nezim, and seconded by Mr. A. H. Wallis—

“That the Association regards with alarm the proposal now before the Government to amend the provisions of the Code of Criminal Procedure, 1882, in so far as they relate to the exercise of jurisdiction over European British subjects; and that the Association, now in meeting assembled, desires to record its emphatic disapproval of the proposed amendment as being impolitic, unnecessary, and repugnant to the feelings of Her Majesty's European British subjects in India.”

Carried unanimously.

Proposed by Mr. George Irving, seconded by the Honourable J. E. Caithness—

“That this Association, in view of the recent public demonstrations of feeling and opinion on this subject on the part of Her Majesty's European British subjects throughout the country, and the representations already made to the Government, feel it to be needless to submit, in respect thereof,

a separate memorial; it desires, therefore, that copies of the Resolutions passed at this meeting be forwarded to the Secretary to the Government of India in the Legislative Department, with a letter signed by all the members of the Association, for submission to his Excellency the Viceroy in Council as an unanimous expression of the views of the Association, and of its respectful protest against the proposed alteration of the present law of Criminal Procedure, being Act X. of 1882."

Carried unanimously.

The meeting then closed.

(Signed) HENRY PRATT, Chairman.

No. 27.

LETTER from the SECRETARY, British Indian Association, to ADDITIONAL SECRETARY to GOVERNMENT of INDIA, Legislative Department.—(No. 31, dated 8th March 1883).

I HAVE the honour to forward herewith a joint memorial of several Native associations to his Excellency the Viceroy in Council regarding the Criminal Jurisdiction Bill, and request the favour of your laying the same before his Excellency in Council.

I have, &c.
(Signed) KRISTODÁS PÁL.

Enclosure in above.

THE Joint Memorial of the British Indian Association, the Indian Association, the Muhammadan Literary Society, the National Muhammadan Association, the East Bengal Association, and the Vakíls Association, High Court, Calcutta, to his Excellency the Viceroy and Governor General in Council.

Respectfully sheweth,

That your memorialists regard with feelings of deep satisfaction and thankfulness the introduction into your Excellency's Council of the Criminal Procedure Code Amendment Bill, with a view to remove the judicial disqualification of race in the trial of European British subjects in criminal cases, as a step in advance towards the establishment of that equality in the eye of the law without the invidious distinction of country, race, or religion, which is the just pride of British jurisprudence and polity, and the guiding principle of British rule in India.

That your memorialists have noticed with regret a statement to the effect that the Native community do not care for this measure. It is utterly unfounded. However limited the scope of the present Bill may be, the principle on which it is based is just, sound, and righteous, and meets with their entire approval.

That your memorialists had originally intended to convene a public meeting, as the constitutional mode of procedure in matters of this kind in order to give an emphatic contradiction to the statement noticed above, but remembering how apt is such a demonstration to lead to a display of passions and feelings, and to stir up race animosities and antipathy, which none can regret more than your memorialists do, they have thought fit to approach your Excellency in Council on the subject in this form. Your memorialists have too high a regard for the non-official European community of India, and too keen a sense of the services they have rendered by promoting the material advancement and contributing to the political education of the people of this country to take any steps that, though perfectly lawful and constitutional, may have the effect of embittering feelings and setting class against class.

That relying on the wisdom, justice, and liberality of your Excellency's Government, and of Her Majesty's Government in England, and on the noble principles which actuate the great British nation in the government of peoples of many races and religions which owe allegiance to the British

Crown, your memorialists feel confident that your Excellency in Council will not allow any clamour, taunt, or threat, based on mistaken and prejudiced notions, to interfere with the progress and due enactment of this just and righteous measure.

And your memorialists, as in duty bound, will ever pray.

(Signed)- NARENDRA KRISHNA,
President, British Indian Association.

SATTYANAND GHOSAL,
President East Bengal Association.

ABDUL LATIF,
Secretary, Muhammadan Literary Society.

AMIR ALI,
Secretary, National Muhammadan Association.

A. M. BOSE,
Secretary, Indian Association.

ANADAPRASAD BANERJEE,
President, Vakils' Association, High Court,
Calcutta.

No. 28.

LETTER from the SECRETARY, Bengal Chamber of Commerce, to SECRETARY to GOVERNMENT of INDIA, Legislative Department, dated 6th March 1883.

By desire of the Hon. the Sheriff of Calcutta, I have the honour to forward, for submission to the Legislative Council of his Excellency the Governor General of India, copies, hereto annexed, of resolutions adopted at a public meeting of the European community held at the Town Hall of this city on Wednesday the 28th of last month, relative to the Bill to amend the Criminal Procedure Code of 1872, so far as it relates to the exercise of jurisdiction over European British subjects.

I have, &c.
(Signed) H. W. I. WOOD.

RESOLUTIONS adopted at a Public Meeting held at the Town Hall on the 28th February 1883 referred to in the preceding Letter.

First Resolution.—Proposed by J. J. J. Keswick, Esq., seconded by J. H. A. Branson, Esq., supported by W. Bleeck, Esq.,—

That in the opinion of this meeting the Bill for the amendment of the Criminal Procedure Code is unnecessary in the interests of justice; uncalled for by any administrative difficulty; based on no sound principle; founded on no experience, whilst forfeiting a much valued and prized and time-honoured privilege of European British subjects; it confers no benefit upon Natives, whilst imperilling the liberties of European British subjects; it in no way affords any additional protection to Natives; it will deter the investment of British capital in the country by giving rise to a feeling of insecurity as to the liberties and safety of the European British subjects employed in the Mufassal, and also of their wives and daughters; and it has already stirred up on both sides a feeling of race antagonism and jealousy, such as has never been aroused since the mutiny of 1857.

Second Resolution.—Proposed by J. Pitt-Kennedy, Esq., seconded by W. H. Pratt, Esq., supported by J. G. Apcar, Esq.,—

That memorials of protest be drawn up, and circulated for signature in Bengal and other provinces; and, when duly signed, be presented to his Excellency the Viceroy and Governor General in Council and to Her Majesty's Secretary of State for India; and that the sheriff be requested to sign the same on behalf of this meeting.

That petitions for the protection of the rights, privileges, and liberties of Her Majesty's European British subjects be drawn up and circulated for signature in like manner, and, when duly signed, presented to both Houses of Parliament.

Third Resolution. — Proposed by J. Murdoch, Esq., seconded by D. Cruickshank, Esq., supported by the Rev. H. Finter—

That a committee be formed consisting of the following gentlemen:— Messrs. Keswick, Flemington, Thomas, A. B. Miller, Apcar, Branson, Ezra, Gubboy, Finter, Madge, Murdoch, and Cruickshank, with power to add to their number, for the purpose of preparing the memorials and petitions in terms of the last resolution.

(Signed) ROBERT MILLER, Sheriff.

No. 29.

THE MEMORIAL of the EUROPEAN BRITISH-BORN SUBJECTS of HER MAJESTY the QUEEN-EMPRESS and EMPLOYÉS of the EAST INDIAN RAILWAY COMPANY to His Excellency the Most Honourable the MARQUESS OF RIPON, K.G., P.C., G.M.S.I., G.M.I.E., Viceroy and GOVERNOR-GENERAL OF INDIA IN COUNCIL.

MOST HUMBLY AND RESPECTFULLY SHEWETH,

1. That your memorialists have read with much concern the provisions of the Criminal Procedure Code Amendment Bill which was introduced into your Excellency's Council by the Honourable Mr. Ilbert on the 2nd February 1883, by which it is sought to invest Native Civil Servants with jurisdiction over European British subjects in criminal cases.

2. That your memorialists humbly submit that they have a constitutional right to be tried only by their peers and their country, and that in India they have always enjoyed the right of being tried by men of their own nationality, and have done nothing whatever to forfeit that right.

3. That, although the Natives of India have by force of conquest become subjects of the British Crown, they are, nevertheless, still aliens both in nationality and religion; and a European British subject appearing before a court presided over by a Native magistrate or judge would be essentially before a foreign tribunal, without the advantage of that consular protection which he would be entitled to in a foreign country.

4. That, in the humble opinion of your memorialists, the proposed amendment of the existing law is not only inopportune, but is calculated to engender class feeling and race antagonism, which your memorialists, who are collaborators with a very large number of Native railway employés cannot too strongly deprecate as being injurious in the extreme to European and Native alike, and to the public Service generally.

5. That your memorialists would draw your attention to the fact that no dissatisfaction has been expressed by the Native community generally on the subject of the immunity from Native jurisdiction now enjoyed by European British subjects, and that none of their privileges have been affected by the existing order of things. In proof that the present law, as a piece of class legislation, has been a success, and that cases coming under it should be inquired into and tried by trained European magistrates, your memorialists beg to quote the opinion expressed by the Honourable the Legal Member of Council at the meeting of your Excellency's Council on the 2nd ultimo, in which he said, "and as to the facts with which we have to deal, no one who has studied the statistics and report of the cases involving charges against European British subjects can fail to be struck with two things; first, that, as compared with the great mass of ordinary criminal business, they are *exceptionally rare*, and secondly, that they are *exceptionally troublesome and difficult*."

6. That your memorialists, as railway employés, are more likely to be injuriously affected by the proposed change in the law in respect of jurisdiction over European British subjects than other classes of the European community; first, on account of, in many cases, their isolation at stations far removed from European centres and courts of revisional jurisdiction; and, secondly, owing to the great amount of technical and scientific evidence that is usually introduced into railway criminal cases, and which would be

almost, if not quite, unintelligible to a Native magistrate. A protracted trial, with all the heavy expenses attendant thereon, followed probably by an erroneous and perhaps ruinous judgment, might therefore not unreasonably be expected from the judge's want of technical knowledge and experience in subjects with which European judges are all more or less familiar. To illustrate the possible vexatious action of a Native magistrate in a railway criminal case, your memorialists feel that they cannot do better than quote an instance which recently occurred in which the presiding magistrate was a Native.

On the 19th November 1882 a collision occurred in the Howrah yard, and on the 22nd a line jamadár was prosecuted for carelessness in connexion therewith before a Native magistrate. The jamadár *admitted his guilt*, and formal evidence only was necessary to summarily dispose of the case; but the magistrate, after recording some evidence, postponed the case until the 24th idem. When the case was resumed some technical evidence was tendered and rejected, and the trial was then postponed until the following morning at 8.30 o'clock for a local investigation. At the appointed hour *ten* railway employés, European and Native, attended in the goods yard but the magistrate did not come, and, after waiting in the yard at much inconvenience to the traffic and themselves until 12.30 p.m., they were all summoned by a court messenger to the court-house, only to be informed on their arrival there that the magistrate had left, but that he would be in the yard at 2.30 p.m. Again the ten witnesses returned to the goods yard and had to wait there until dark, when a messenger arrived at 5.30 p.m., and said that the magistrate could not come. Two days after this, notice was received that the case would come on for trial on the 29th November, but the magistrate did not attend the yard until 4.30 p.m., and again postponed the case until the 4th December. The ten European and Native witnesses duly appeared on the latter date, but only *one* of them was called to give some slight formal evidence and then, after all these adjournments, the prisoner was convicted on his own plea of "guilty."

7. That your memorialists, whilst fully and cordially recognising the right of Natives to a share in the administration of the laws of this country, beg to point out that the proposed amendment, if it becomes law, will place European British subjects at a positive disadvantage when compared with the mass of the population of India.* An *Indian* British subject will enjoy the high privilege of being tried by his countrymen or by European magistrates who have been specially selected, educated, and trained for the Indian Civil Service, and who have taken up their fixed residence in India; but European British subjects will be under the jurisdiction of Native magistrates and judges, whose ideas of western civilisation, manners, and thought will have been gained only in India, or during two or three years' study in England, instead of their being subject, as at present, only to the jurisdiction of highly trained and educated Englishmen, who, being of their own nationality, have an intimate knowledge of their inner life, habits, and manners.

8. That your memorialists would draw attention to the fact that a Native magistrate of any class can exercise, under section 445 of the Criminal Procedure Code, nearly, if not all, the powers which a justice of the peace can exercise in England, inasmuch as he can issue process of arrest, making it returnable to himself or to any other magistrate having jurisdiction.

9. That your memorialists would deprecate any argument founded on the basis that because Natives exercise jurisdiction over European British subjects in Presidency towns, they should therefore exercise that jurisdiction outside Presidency towns as obviously misleading, seeing that the respective positions are widely different. In a Presidency town any high-handed proceeding of a magistrate would not of necessity imperil the liberty of the subject, as an immediate application could be made to the High Court, and a suspensory writ obtained within an hour; but in the mofussil the European British subject would be entirely at the mercy of the local Native authority, and would be liable to be degraded by actual confinement in an Indian gaol, perhaps with hard labour, in a most deleterious climate, before a distant

High Court could be moved by the most energetic advocate to suspend a sentence which might ultimately prove to be unwarranted by law.

10. That your memorialists, in conclusion, would respectfully submit that the protection which has hitherto been afforded them by the existing law is no more than they are entitled to under the British Constitution, and, as Múhammadans, Hindus, Parsís, and many other races and sects in India are protected in the exercise of their own peculiar laws and customs by class legislation, your memorialists pray that the rights and liberties so dear to them, and which are menaced by the proposed amendment of the Code of Criminal Procedure, may not be withdrawn.

And your memorialists will ever pray, &c.

(Signed) — BRADFORD LESLIE, and 1,226 others.

No. 30.

A SUPPLEMENTARY MEMORIAL from Employés of the East Indian Railway is similar to that printed as immediately preceding, and is signed by 100 persons, but it is not printed in this collection.

No. 31.

LETTER from the SECRETARY, BENGAL CHAMBER of COMMERCE, to SECRETARY to GOVERNMENT of INDIA, LEGISLATIVE DEPARTMENT, dated 6th March, 1883.

AT a special general meeting of the Bengal Chamber of Commerce, held on Wednesday, the 21st of last month, resolutions were adopted with reference to the Bill to amend the Criminal Procedure Code of 1882, so far as it relates to the exercise of jurisdiction over European British subjects; and I am desired to forward copies thereof, hereto annexed, with the request that the same be submitted to the Legislative Council of his Excellency the Governor General of India.

I have, &c.
(Signed) H. W. I. WOOD.

The following Resolutions passed at a meeting of the Chamber of Commerce, held on the 21st February 1883, and referred to in preceding Letter.

Resolution.—Proposed by J. J. J. Keswick, Esq., seconded by James Murdoch, Esq.

That in the opinion of this meeting the alteration of the law proposed by the Government in the Bill entitled “A Bill to amend the Code of Criminal Procedure of 1882, so far as it relates to the exercise of jurisdiction over “European British subjects,” calls for the unqualified disapproval of the Bengal Chamber of Commerce, and should be opposed to the utmost by every means in its power.

Second Resolution.—Proposed by J. W. O’Keefe, Esq., seconded by J. P. Thomas, Esq.

That a Sub-Committee of this Chamber be appointed to draw up a memorial to Government protesting against the Bill, and to take steps to procure signatures to the memorial throughout every district.

Third Resolution.—Proposed by the Honourable R. Miller, seconded by E. E. Bigge, Esq.

That the following members of the Chamber be invited to form the Sub-Committee for the foregoing purpose:—

J. J. J. Keswick, Esq., D. Cruickshank, Esq., J. Murdoch, Esq., J. Flemington, Esq., A. G. Watson, Esq., F. Aitchison, Esq., with power to add to their number.

Fourth Resolution.—Proposed by R. A. Turnbull, Esq., seconded by J. J. Guise, Esq.

That this Chamber confer with the Chambers of the Bombay and Madras Presidencies, so as to have united action against the Bill.

No. 32.

LETTER from the CHAPLAIN of GHÁZIÁBAD to SECRETARY to GOVERNMENT of INDIA, Legislative Department, dated March 5, 1883.)

I HAVE the honour to forward herewith, a memorial signed by the residents of Gháziábad, for the favourable consideration of his Excellency the Viceroy and Council, on the subject of the proposed Criminal Procedure Bill.

I have, &c.
(Signed) C. B. WESTERHOUT.

The Petition of the undersigned European British subjects of Gháziábad, in the District of Meerut, to his Excellency the VICEROY, PRESIDENT, and the Hon. MEMBERS of the Legislative Council for India, and referred to in preceding letter,—

HUMBLY SHOWS,—

1. THAT your petitioners view with extreme apprehension and alarm the introduction of the Bill for giving jurisdiction to Native magistrates over European British subjects.

2. That, so far as your petitioners are aware, the only reason assigned for depriving them of a privilege which they have always been accustomed to look upon as a birthright, and which they most highly prize, is one of sentiment, and that in favour of a class of persons who themselves, as remarked by Sir Fitz-James Stephen, have numerous privileges which are not accorded to your petitioners; *e.g.*, the exemption of *parda nishtn* women from attendance in civil courts.

3. That the Hon. Member who introduced the Bill could not but admit that the present law had worked well; that the number of cases against European British subjects were few; and the existing qualified magistrates quite sufficient to deal with them; and that the nature of the cases were such as required their determination by magistrates of some experience and tried abilities. All these reasons your petitioners submit, are in favour of making no alteration in the law as it is at present.

4. That the two principal reasons assigned for the proposed alteration are—

1st.—The invidious position of Native magistrates who are members of the Civil Service.

2nd.—The fact that the existing law is founded on a compromise.

Your petitioners would remark, as to the former, that it is no grievance, and that a mere sentimental feeling, so far as your petitioners are aware, has never been considered a sufficient reason for depriving a class of persons of privileges which they highly prize, when such privileges work no injury to the non-privileged members of the community. Your petitioners would here remark that the same reason would apply for conferring the jurisdiction on all Native magistrates of the first class.

As to the latter, your petitioners would beg to point out that it is this compromise which has conferred the present extended jurisdiction on Mufassal magistrates and sessions judges. Prior to the Criminal Procedure Code, 1872, no European British subject could have been sentenced to imprisonment, however short, by a Mufassal magistrate or sessions judge except for non-payment of a fine.

5. Your petitioners respectfully beg to point out how impossible it is for them to have any confidence in the Native magistracy, when they are fully aware that the Natives themselves have no such confidence; and would, in all cases, prefer being tried by European magistrates.

6. That the effect of the mere introduction of the Bill into Council has been to embitter the feelings between European British subjects and Natives.

Your petitioners cannot do better in support of this allegation than refer to the article in the "*Amrita Bazar Patrika*"* quoted at length by the "*Englishman*."

* Headed "*Empress versus Privileges of Cowards*."

7. Finally, your petitioners would submit, that the state of Native society is such as to make the appearance of a European woman before a Native magistrate a disgrace to her; and especially in the eyes of the Natives themselves.

Your petitioners therefore pray that your Excellency in Council will be pleased to take this petition into your favourable consideration and to reject the Bill.

And your petitioners, as in duty bound, will ever pray, &c.

(Signed) A. WILKINSON, and 101 others.

The 2nd March 1883.

No. 33.

The HUMBLE MEMORIAL of the undersigned Anglo-Indian and European British Subjects residing at Mirzāpur in Upper India to the RIGHT HON. the VICEROY and GOVERNOR-GENERAL of INDIA IN COUNCIL.

SHOWETH,

THAT your memorialists have learnt with surprise and alarm that a Bill has been introduced into the Legislative Council of India, having for its object the conferring, for the first time in the history of India, upon Natives of India, of criminal jurisdiction over European British subjects residing in the Mufassal.

2. Your memorialists have also learnt with surprise that the Government of India has given its sanction to this innovation in the law of India without being subjected to the slightest pressure proceeding from the Natives of India; that it has, of itself, thus raised this grave question of race antagonism, and that it bases its action principally on the ground that a large proportion of covenanted civilians,—i.e., Lieutenant-Governors, Commissioners, and other salaried officials who have little or no stake in the permanence of British rule in India, and who can have very few more years to reside in India,—after being informed of the Governor-General's opinion of the measure, have expressed themselves to be in favour of the same.

3. Your memorialists further notice with regret that the Government of India entirely failed to seek for any expression of opinion regarding this measure from either those European British subjects residing permanently in the Mufassal, whose lives and fortunes depend on the security of life and property in the Mufassal—the persons likely to be affected in their personal safety by measures of this kind—or the great body of English merchants, planters, traders, and others, both in England and in this country, being those who are likely to suffer by depreciation in the value of their property.

4. Though your memorialists are as strongly impressed as any one can be of the desirability of extending the principle of equality in the judicial administration of India, where it can be done with safety and without disturbance, yet, considering the disproportion in numbers of Natives and Europeans in India, especially of Europeans residing in the Mufassal (about 1 to 5,000 natives), your memorialists are as strongly persuaded that the principle of equality is not applicable in the present state of India, and that Natives, especially those in the Mufassal, are unprepared for, and will entirely misunderstand and misapprehend, the announcement that Europeans are now by law liable to be punished by the Native magistracy.

5. Your memorialists are also strongly convinced that no change in the law is necessary or expedient, and they most earnestly deprecate any further attempts on the part of those Europeans in India, whose power is great, but whose presence is temporary and not permanent, to encourage the Natives of India to agitate for positions in the administration and government of India on the principle of equality, while the following indisputable facts exist, namely:—

- (a.) The Natives of India are admittedly subject races; bearing the greatest enmity and animosity towards each other; dependant on European soldiers to keep the peace; and, except an insignificant number of individuals in the Presidency towns (who owe everything to compulsory education and contact with Europeans), are wholly unfit for independence.

- (b.) They have, unquestionably, more of liberty, peace, and protection than any other people in the world who are subject to foreign domination.
- (c.) They already stand equal before the law; subject to the same penal and civil codes as the dominant race.
- (d.) They have the benefit of personal laws to a greater extent than Europeans—Natives of rank and women being exempted from attendance in courts of justice.
- (e.) The number of Europeans in India are comparatively so small that to admit and enforce the principle of equality without reservation and without considerations of race or feeling in every department would reduce British power in India to a cypher, and make the British occupation of India unmain-
tainable, and eventually produce the same state of anarchy and disorder that prevailed before its conquest by the British.
- (f.) The principle of equality has no application among the Natives themselves, as their domestic and social institutions prove.

6. Your memorialists further submit that, with so many indications present in the minds of the people of India, namely:—

- (a.)—of their acknowledged unfitness for independence or self-government;
- (b.)—of their (with few exceptions) acknowledged unfitness to exercise jurisdiction over the liberty and lives of even their own fellow-countrymen;
- (c.)—of the necessity of excluding them from exercising any power except under proper safeguards;
- (d.)—of the necessity of excluding them from appointments in the army, and taking part in the defence of their country against disturbers of the *Pax Britannica*;

to propose to grant them the principle of equality to the extent of permitting them to sit in judgment upon members of the dominant race seems to your memorialists residing in the Mufassal an unnecessary and dangerous innovation, which for many generations to come your memorialists (speaking on behalf of their wives and children) will never calmly acquiesce in or submit to.

7. Your memorialists unhesitatingly aver that should this Bill pass (which has already been spoken of by the Native papers as “an instalment” of what is to follow), there will be no adequate security or safety for your memorialists and European residents in the Mufassal, and the present peaceful state of India will, on the punishment of a European by a Native, be liable to disturbances of such a character as, if once set on foot, will produce greater anarchy and disorder than has been known in India for centuries.

8. Your memorialists would further observe that they perceive in this Bill, in which the principle of equality is affirmed, the prelude to others of a similar character calculated to destroy British interests in, and exclude Europeans from, Mufassal India. That if such is the ultimate aim and policy of the Government of India, your memorialists submit that the same should be boldly announced, and notified to your memorialists and the thousands of Europeans entering into and settling in the country.

Your memorialists therefore pray—

- (1.) That they may be heard by counsel against the passing of this Bill.
- (2.) That the Bill may be thrown out.
- (3.) That the Bill, if passed, may be limited to Bengal, or places where residents will have the protection of European public opinion and the press.

And your memorialists will ever pray.

(Signed) EDGAR HILL, and 33 others.

No. 34.

A memorial from Anglo-Indian and European British subjects residing at Cawnpore is, *mutatis mutandis*, identical with the preceding from Mirzâpur, but is not printed in this collection.

No. 35.

A memorial from Anglo-Indian and European British subjects residing at Saharanpur is, *mutatis mutandis*, identical with the preceding from Mirzâpur, but is not printed in this collection.

No. 36.

A memorial from Anglo-Indian and European British subjects residing at Ghazipur is, *mutatis mutandis*, identical with the preceding from Mirzâpur, but is not printed in this collection.

No. 37.

The MEMORIAL of the EURASIAN and ANGLO-INDIAN ASSOCIATION to His Excellency the VICEROY and GOVERNOR-GENERAL OF INDIA IN COUNCIL, dated 8th March 1883.

RESPECTFULLY SHOWETH,—

THAT your memorialists have become aware of the desire of the Legislature to be informed of public feeling, in all classes concerned, in regard to a proposed change in the criminal law relating to the subjection of European British subjects to certain Native magistrates in the Mufassil; and that, as loyal subjects, many of whom personally possess the status of European British subjects under the law, your memorialists submit for consideration the following objections which they hold against the change.

2. That it is a wise maxim of British statesmanship that legislation, and more especially important legislation, should wait upon necessity; and that no pressing necessity has been made out for this change in the Statement of Objects and Reasons which has been given to the country.

3. That, in the absence of such necessity, the grounds advanced for the change are, that “it was thought anomalous that, while Natives of India “were admitted to the Covenanted Civil Service, and held competent to “discharge the highest judicial duties, they should be deemed incompetent “to be justices of the peace, and to exercise jurisdiction over Europeans “outside the Presidency towns;” and that “the Government of India had “accordingly decided to settle the question of jurisdiction over European “British subjects in such a way as to remove from the Code, at once and “completely, every judicial disqualification which is based merely on race “distinctions.”

4. That, as regards the implied popularity of an assumed objection to an alleged anomaly, your memorialists have reason to believe that public feeling is very much divided on the subject, and that the preponderance of opinion weighs against, rather than for, the change, but that, at any rate, if the convictions of all thoughtful persons throughout the country, including responsible officials, missionaries, non-officials, and Native gentlemen of good family and real social influence in the interior, were carefully sought, it would be found that the right of a European British subject to be tried by his peers is not thought more anomalous, or in any way more offensive, and is probably thought much less so, than the predominance of British power in India, and that all consistent objections which tell against the one, the mere fraction of a composite anomaly, tell with equal, if not greater, force against the other—the whole.

5. That in the opinion of the European and Anglo-Indian community, the concessions to native prejudice made in connexion with the administration of

justice, such as the exemption of the Native gentry and ladies from attendance as witnesses in our law courts, represent greater anomalies than any involved in the right of European British subjects to be tried by their peers. To such concessions the European community have never demurred; and they feel that, on this very account, the only right which they themselves have hitherto enjoyed should remain untouched.

6. That, without presuming to assert that the Indian Legislature has no strict legal power to enact that European British subjects may be tried by Native judicial officers, your memorialists respectfully submit that a great constitutional difficulty underlies the proposed legislation. That during the many centuries through which the English people struggled for liberty and for the complete and practical attainment of the right of trial by one's peers, the possibility of the spectacle of an Englishman being tried by anybody but an Englishman was not, and could not have been, contemplated. That such a possibility has now arisen, not only in India, but in several of the dependencies and colonies belonging to the British Empire, such as Cape Colony, Natal, New Zealand, and the West Indies. That, without denying the many virtues and merits of the Natives of India and of these other countries, it cannot be contended that they are the peers or equals of Englishmen. That the trial of an Englishman by a Native of any of these dependencies, that is to say, the trial of an Englishman by one who is not his peer, is an infringement of a great constitutional right. That your memorialists respectfully, but confidently, submit that the Parliament of Great Britain and Ireland is the only Legislature which ought to deal with so momentous a trespass on the principle which is the foundation of English constitutional law.

7. That your memorialists crave leave to submit the following considerations to illustrate the force of the contention put forward in the last preceding paragraph, and to establish the fallacy of what is now popularly known as the argument from anomalies. A peer of the realm, charged with a felony in England, can only be tried by his peers, that is, by the House of Lords. If the principle which underlies the Bill which is now under consideration be sound, an English peer, charged with a similar offence in India, would be liable to be tried and punished by a Bengálí judge. *Ex hypothesi*, therefore, a court presided over by a Bengálí judge in India would have a higher jurisdiction than a court presided over by the Lord Chief Justice of England.

8. That if it is not certain that an English peer, charged with felony in India, could not claim his constitutional right of being tried by the House of Lords, by parity of reasoning, an English commoner sojourning in India ought also, your memorialists submit, to be considered to have brought with him to India *his* constitutional right of being tried by *his* peers; that, speaking broadly and generally, a Native of India is not an Englishman's peer, and that, therefore, an Englishman in India cannot be liable to be tried by a Native of India.

9. That, if one reason now relied upon for the proposed change is that the administrative difficulty which has arisen in consequence of the appointment of covenanted Native civilians to the office of sessions judge was not anticipated on former occasions when the question was fully discussed, this reason, your memorialists submit, is not borne out by the provisions of either Act X. of 1872 or Act X. of 1882, which distinctly contemplated and expressly provided for the contingency of a sessions court presided over by a judge who was not a European British subject. Your memorialists solicit attention to the terms of the two sections:—

Section 77, Act X. of 1872.—"If the Sessions Judge of the Sessions Division within which the offence is ordinarily triable is not a European British subject, the case shall be reported by the Committing Magistrate for the orders of the High Court."

Section 450, Act X. of 1882.—"If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the Committing Magistrate for the orders of the highest court of criminal appeal for the province within which such division is situate."

10. That, as regards the allusion made in the Statement of Objects and Reasons, already quoted, to "race distinctions" in law, such an allusion derives all its significance from considerations of abstract justice which cannot,

your memorialists respectfully plead, apply to a country sustaining the relation which India unavoidably bears to England ; but that, if it were applicable at all in this peculiar relation, the same abstract justice on which it relies would demand its enforcement, not against a single distinction, but against every distinction based on differences of race, and that the further action, which would be the only just outcome from any movement in this direction at all, would involve the simultaneous withdrawal of all the privileges and exemptions hitherto conceded to Native gentlemen of rank and to Native ladies, as well as to the removal of the legal civil disabilities under which European British subjects in a large class of suits between themselves on the one part as plaintiffs, and Mahummadans or Hindús on the other as defendants, are compelled to bear the burden of subjection to Mahummadan and Hindú laws.

11. That, as regards the question of personal disqualification, unhappily raised in the present discussion on jurisdiction, your memorialists would respectfully remind the Government of India that, as Sir I. Fitz-James Stephen, an English jurist of great eminence, and an Anglo-Indian official of some experience, clearly pointed out on the occasion of a former discussion in 1872, "*the privilege as to jurisdiction is the privilege of the prisoner, and not the privilege of the judge ;*" that it would alter the whole attitude consistently for many centuries taken by English law towards persons accused of offences, if allowances deliberately made, and carefully guarded from a tender regard for individuals placed in the painful position of persons accused of offences, and always held to be innocent unless and until proved to be guilty, were now suddenly withdrawn in deference to sentimental ideas about the personal dignity of judges which find no place among English traditions.

12. That the right of trial by peers forms part and parcel of, and is inseparable from, the habitual concern disclosed by the English law for the accused, and that this concern commends itself to the Christian conscience as the root of many considerate arrangements, which conduce not only to the safety of the body, but also to the comfort of the mind, of a person who may be innocent whilst charged with a foul crime. That all such considerations possess a grave meaning in India, where an innocent accused person may be an Englishwoman, and where women are not treated by men with the chivalrous respect that has grown into a habit in Christian countries.

13. That, under these circumstances, attacks made by Natives in a hostile spirit on privileges conceded to accused persons, betoken, especially when connected in an illogical way with irrelevant questions of personal disqualification, a condition of mind that calls for repression rather than encouragement ; and that such attacks, whatever position a few well-meaning Englishmen may thoughtlessly take up in regard to them, could never, your memorialists respectfully urge, be originated by a typical English magistrate or a typical English judge. That the fascination which such attacks evidently possess for a class of over-sensitive Indian minds affords strong proof of the great difference between the English ideal of the judicial mind, and the ideal which, in spite of education and external social influence, still prevails in this country ; and that such attacks possess a serious significance for the Indian Government which has been understood to repose trust in the judicial qualifications of the educated native mind.

14. That if the proposition submitted by your memorialists be unassailable, namely, that the question of jurisdiction relates to the privileges of the accused, and not to the competence of the court, a proposition abundantly proved by the numberless exemptions and distinctions based on race and social customs which it is apparently intended inconsistently to leave untouched after the solitary personal right claimed by European British subjects is given up, it should lead, your memorialists respectfully but earnestly urge, to a more careful consideration of the proposed amendment than it would appear yet to have received (judging from the papers published in connexion with the Bill introduced into the Legislative Council) from the particular stand-point suggested in the present remarks.

15. That if, and when, so viewed, the right of European British subjects to be tried by their peers commends itself to unprejudiced minds as being not merely absolutely free from all such invidiousness as has unreasonably been imported into it, but also in perfect harmony with the right given to all

accused persons in this country, to challenge jurors of whose qualifications to understand them and do them justice they themselves (and not the Government or the trying officer) may entertain any doubt. No right-minded European British subject has ever felt offended at being so challenged by an unfortunate Native of India placed on his trial on a criminal charge, or thought of urging on the Legislature a withdrawal of the right as involving a reflection on himself or a civil disqualification. Nor, if any wrong-minded European British subject thought fit to do so on the ground of some imaginary offence lurking in the right, or of any inconvenience which it caused to the administration of justice, is it conceivable that the Legislature would grant the request.

16. That your memorialists sincerely and solemnly believe, and, therefore, humbly but gravely urge, that a truer lesson in self-culture, and, therefore, one better calculated to serve their own higher interests in the end, would be taught to the small section of educated Natives, chiefly in the province of Bengal, who have no real personal interest whatsoever in this matter, but yet have demanded, or are demanding, not only the subjection of European British subjects in the Mofussal, to Native justices of the peace, but also the prosecution of the principle underlying the proposed change to its logical extreme, if they were now kindly, but firmly, instructed in the real merits of the question which they have virtually raised, and are keeping open, as these appear to fellow-subjects who have done them no wrong and wish them no harm, than if their present more or less unworthy and wholly unfriendly feeling, and the politically dangerous and socially suicidal mood, of which it is the clear and melancholy evidence, were, without sufficient consideration, gratified at much cost to their European British subjects and with no benefit whatever to themselves.

17. That, acting solely in self defence, and without an unkindly thought or feeling towards those side by side with whom, in the province of God, they are called to pass their lives in this country, your memorialists earnestly and solemnly pray that the Criminal Procedure Code Amendment Bill, now before the Council, may not be passed.

And your memorialists, as in duty bound, shall ever pray, &c.

On behalf of the Board of Direction Eurasian and Anglo-Indian Association.

(Signed) W. C. MADGE, Secretary.

No. 38.

TELEGRAM from the CHAIRMAN, BOMBAY CHAMBER of COMMERCE, to SECRETARY to GOVERNMENT of INDIA, Legislative Department, dated 8th March, 1883.

At a numerously attended special general meeting of the Chamber, called to consider Bill amending Criminal Procedure Code, following resolutions where passed almost unanimously, three Native members only dissenting. That, in the opinion of this meeting, the Bill for the amendment of the Criminal Procedure Code is, under existing circumstances, uncalled for, and ought not to have been introduced without first eliciting the opinions of the unofficial classes, whom the proposed change in the administration of the law will affect. Special committee appointed to frame memorial to Viceroy praying abandonment of proposed amendment. Memorial will be forwarded shortly through Bombay Government, but Viceroy proposes stating his views on subject in Legislative Council on 9th instant. Detailed proceedings of meeting and memorial will not reach in time. Chamber respectfully commends resolutions to favourable consideration of Viceroy, submitting no real necessity exists for measure, nor has any pressure been brought upon Government to introduce it. Measure also considered premature, as Bill will affect whole Mufassal European community, while, on other hand, affecting status of only a few Natives in Bengal and Bombay. Further, measure pronounced inopportune, and calculated to imperil success of other important measures now pending.

No. 39.

RESOLUTIONS of the PUBLIC MEETINGS held at Muzaffarpur, Motihári, Darbhanga, Samástipur, Chaprá, Barhoga (Siwán), on the 5th March 1883, received through the Hon. Sir S. C. Bayley.

Resolved.—That all present at this meeting protest against any interference with the rights we enjoy as European British subjects in India. That we believe it is only ignorance of the position in which thousands of Europeans are placed in the interior that permitted the proposal to give Natives jurisdiction over European British subjects to be placed before the Council, and that we authorise the Secretary of the Bihár Indigo Planters' Association to request the Hon. Sir Steuart Bayley to place this, our firm and indignant protest, before his Excellency the Viceroy, in the assurance that Lord Ripon will not permit our most cherished right of being tried by our peers to be taken from us :—

Meeting.	Chairman.	Signatures.
Muzaffarpur - -	J. S. Begg, Dist. Honorary Secretary } W. B. Hudson, General Secretary }	95
Motihári - -	Dr. J. H. G. Hill - -	54
Chaprá - -	E. G. Williams - -	56
Darbhanga- -	M. Gale - -	23
Barhoga (Siwán) -	D. N. Reid - -	38
*Samástipur (Jitwarpur)	W. S. Crowdy - -	28
		294

* Separate Resolution forwarded herewith.

No. 40.

RESOLUTION of a PUBLIC MEETING held at Jitwarpur on 5th March 1883, received through the Hon. Sir S. C. Bayley.

Mr. W. S. Crowdy having been voted to the chair.

Proposed by Mr. F. Mackinnon,

Seconded by Mr. W. S. Mackenzie,—

That, in the opinion of this meeting, the change in the law proposed by Government in the Bill to amend the Criminal Procedure Code, by which European British subjects in this country will lose the privilege which they have hitherto enjoyed of being tried by their countrymen, is an unjustified invasion of their rights, which they have done nothing to forfeit.

The proposed amendment is not required by any administrative necessity, nor in the interests of justice, it will not in any way benefit Natives, while it will seriously endanger the liberties of Europeans in remote parts of the Mufassal.

The principle of the proposed measure, if once admitted as a basis for legislation, must logically be carried out to still greater lengths in the way of interference with the rights of the European community in India, and calls for the unqualified condemnation and opposition of all those interested in preserving them.—(Carried unanimously.)

Proposed by Mr. S. Nicholson,

Seconded by Mr. W. Mackenzie,—

That the Secretary of the Bihár Indigo Planters' Association be requested to represent the resolution of this meeting, in combination with the resolutions of other meetings throughout these districts, in the proper quarters, and to co-operate generally with the committee appointed at the Calcutta meeting of 28th February last in petitioning the Indian and Home Governments.—(Carried unanimously).

(Signed) W. S. CROWDY, Chairman,
and 27 Signatures.

No. 41.

LETTER from the ASSISTANT SECRETARY to CHIEF COMMISSIONER, ASSAM, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department.—(No. 330, dated March 16, 1883).

At the instance of Mr. James Peters, of Hailakandi, in the Káchár district, I am directed to forward, in original, the minutes of proceedings of a meeting of tea-planters of Hailakandi, in which they protest against the proposed amendment of the Criminal Procedure Code.

I have, &c.
(Signed) W. C. MACPHERSON.

RESOLUTIONS passed at a Meeting held at Hailakandi on the 1st March, 1883, and referred to in preceding Letter.

1stly.—Proposed that Mr. Peters take the chair. Carried unanimously.

2ndly.—That the following resolutions be communicated to the Assistant Commissioner.

3rdly.—That notwithstanding Governmental promises to the effect that no Bill would become law without allowing full time for discussion, this meeting deprecates the haste with which this Bill is being pushed on, as not allowing the European residents time to lay fully their views before Government, and strongly protests against the same.

4thly.—It was unanimously agreed that the present meeting view with great apprehension Mr. Ilbert's Bill to amend the Criminal Procedure Code, and beg to record a strong protest against the same, as likely, more especially in Mufassal districts like the tea-districts, to create a still further gap in the already existing race-prejudices, and as being likely to alienate capital from a district which has sprung into a prosperous condition by the aid of European energy and capital.

5thly.—That already, before this has become law, the Native press are calling for more concessions and protesting against the control of coolies in Darjeeling; such control, too, as contemplated, being only what exists in every town in the United Kingdom. The meeting, therefore, strongly protests against any of the contemplated concessions.

6thly.—That, under the above circumstances, as there is no time given to lay our views before Government in writing, it is resolved unanimously that the Assistant Commissioner be asked to telegraph the above resolutions to the Chief Commissioner, to be laid immediately before the Viceroy's Council.

With a vote of thanks to the chair the meeting dissolved.

(Signed) JAMES PETERS, Chairman.

No. 42.

LETTER from the PERSONAL ASSISTANT to CHIEF COMMISSIONER, Assam, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department.—(No. 459T., dated March 23, 1883).

I AM directed to forward, for submission to his Excellency the Viceroy, a copy of resolution passed by a meeting of planters held at Jorehat on the 16th March last, regarding the proposed amendment of the Code of Criminal Procedure.

I have, &c.
(Signed) B. G. GEIDT.

RESOLUTIONS passed at MEETING of EUROPEAN PLANTERS held at CINNAWARA. in the Jorehat District, on March 16, 1883 ; and referred to in preceding Letter.

First.—That this meeting views with indignant astonishment the proposed alteration of the Criminal Procedure Code giving Natives the power of trying Europeans, and thereby depriving the latter not merely of a privilege but of an inalienable right, that, namely, of every Englishman being tried by his peers, which it is difficult to believe that any Government, however despotic and arbitrary, could wish to deprive him of.

As the present state of the law under which European British subjects can only be tried by Europeans, does not in any way interfere with the privileges of the Native population, nor involve any injustice towards them, the non-official Europeans of the community here unanimously resolve and pledge themselves to oppose and resist by every means in their power the proposed amendment of the Criminal Procedure Code, and, if the amendment becomes law, are strongly convinced that the relations between Europeans and Natives, which hitherto have been most friendly, will be severely strained—a most unfortunate result, for which the Government will be entirely responsible through this ill-advised scheme. Already bitter feelings have been shown on both sides in consequence of it, and the growth of cordiality between the two races, which was the outcome of the policy of former Governments, has been thrown back to a lamentable degree.

Second.—That this meeting condemns the policy of the Government in attempting to degrade the status of the non-official European population without in any way consulting them, and deeply regrets that Government, while professing to do everything in its power to encourage private enterprise, should take such a step, which would undoubtedly be the means of driving away capital from the country generally, but more especially from an outlying province like Assam.

Third.—That copies of the above resolutions be sent to the Chief Commissioner of Assam and to the Chamber of Commerce, to be forwarded to the Viceroy.

(Signed) J. HUTTMANN, Chairman.

No. 43.

LETTER from the SECRETARY, BURDWAN ASSOCIATION, to SECRETARY to GOVERNMENT of INDIA, Legislative Department, dated 4th April 1883.

I HAVE the honour to forward herewith, copy of certain resolutions adopted at a meeting of the inhabitants of District Burdwan held on the 18th ultimo, to consider the Criminal Procedure Code Amendment Bill, and to request the favour of your laying it before his Excellency the Viceroy and Governor General of India in Council.

I have, &c.

(Signed) SAJANI KANT CHATTERJEE.

RESOLUTIONS adopted at a MEETING of INHABITANTS of District BURDWAN, held on 18th March 1883, and referred to in preceding Letter.

1. That, in the opinion of this meeting, the Bill to amend the Code of Criminal Procedure, recently introduced into the Legislative Council of India, by conferring criminal jurisdiction on Native members possessing certain qualifications of the Covenanted Civil Service of India, over European British subjects residing therein, is a just, wise, and righteous measure.

2. That, in the opinion of this meeting, the Bill to amend the Code of Criminal Procedure, recently introduced into the Legislative Council of India, by conferring criminal jurisdiction on Native members possessing certain qualifications of the Covenanted Civil Service of India, over European British subjects residing therein, is calculated to remove a growing administrative inconvenience, and to put an end to an unnecessary disqualification affecting the people of this country.

3. That, in the opinion of this meeting, the judicial officers on whom the above jurisdiction is proposed to be conferred are not unfit, either by their education or their nationality, to exercise the same.

4. That the thanks of this meeting be conveyed to his Excellency the Viceroy and Governor General of India for this fresh instance of his noble policy to promote in every respect the welfare and prosperity of this vast country, the government of which is now committed to his care.

5. That the Burdwan Association be requested to forward the above resolutions on behalf of this meeting to his Excellency the Viceroy and Governor General of India.

No. 44.

MEMORIALS from EUROPEAN RESIDENTS of BAREILLY, LUCKNOW, and JABALPORE, are similar to that which is printed as Paper No. 33 relating to the Bill, and therefore not included in the present collection.

No. 45.

MEMORIALS from EUROPEAN RESIDENTS of AGRA, ALLAHABAD, ALIGARH, AZAMGARH, and MEERUT are, *mutatis mutandis*, identical with that printed as Paper No. 33 relating to the Bill, and therefore do not appear in the present collection.

No. 46.

A MEMORIAL almost identical with that which has been printed as Paper No. 29 relating to the Bill, is signed by S. Hartwell, Esq., Officiating Agent, and 183 other employes of the Oudh and Rohilkhand Railway, but is not printed in this collection.

No. 47.

LETTER from the UNDER SECRETARY TO GOVERNMENT, Bombay, to SECRETARY TO GOVERNMENT OF INDIA, Legislative Department.—(No. 2351, dated 5th April 1883.)

At the request of the Bombay Chamber of Commerce, I am directed to forward to the address of his Excellency the Viceroy and Governor General of India the accompanying memorial, dated the 22nd ultimo, praying that the Criminal Procedure Code Amendment Bill, now before the Legislative Council of the Government of India, may be abandoned.

I have, &c.

(Signed) C. G. W. MACPHERSON.

MEMORIAL of BOMBAY CHAMBER OF COMMERCE (dated 22nd March 1883), to His Excellency the Most Honourable the MARQUIS OF RIPON, P.C., K.G., G.C.B., G.M.S.I., Viceroy and Governor General of India; and referred to in preceding Letter.

RESPECTFULLY sheweth,—that at a numerously attended general meeting of the Chamber of Commerce held on the 6th March 1883, to discuss the Criminal Procedure Code, 1882, Amendment Bill, now before the Legislative Council of his Excellency the Governor General, the following resolutions were passed almost unanimously, three Native members of the Chamber only dissenting:—

1. That in the opinion of this meeting, the Bill for the amendment of the Criminal Procedure Code is, under existing circumstances, uncalled for, and ought not to have been introduced without first eliciting the

opinions of the non-official classes whom the proposed change in the administration of the law will affect.

2. That the following members of the Chamber, namely, the Chairman of the Chamber, Mr. M. Mowat, the Honourable W. M. Macaulay, Messrs. Bythell, Russell, L. R. W. Forrest and Blascheck, be appointed a Sub-Committee, with power to add to their number, to prepare a memorial to the Viceroy, praying that his Excellency may be pleased to abandon the proposed alteration in the law.

That the discussion which resulted in the passing of these resolutions is contained in the printed proceedings of the meeting which are appended hereto, and to which your Excellency's attention is respectfully invited.

That the privilege which Englishmen have hitherto enjoyed, of being tried by their own countrymen, is one on which they set the highest value. It has never interfered in any way with the rights of the Natives, nor has it occasioned inconvenience to any appreciable extent in the administration of justice.

That the European communities acquiesced in the proposal to confer on Native magistrates jurisdiction over Europeans in the Presidency towns, in the well-grounded belief that in those towns there were sufficient safeguards for the efficient performance of the duties of their office. The example of other judges, the vigilant criticism of an able and influential bar, from whom the magistrates at the same time receive valuable assistance in arriving at their decisions, and the influence of an intelligent public opinion, were generally felt to be sufficient guarantees against miscarriage of justice. But the case is widely different in the districts of the Mufassal, where a few isolated Europeans may have to contend with the prejudices of the surrounding people, who are necessarily ignorant of their customs and feelings. Even in England, in places where feeling runs high against the accused, it is not uncommon to change the venue in order to secure for him a fair and impartial trial. It is not unnatural for the Native judge in the Mufassal, however able he may be, and anxious to dispense justice impartially, to be to some extent influenced, it may be unwittingly, by the prejudices of his own people: he enjoys none of the advantages which the Native magistrates in the Presidency towns possess, while the European who may be brought before him can neither have the assistance of his countrymen to defend him, nor the protecting influence of a strong and enlightened public opinion. Examples, indeed, are not wanting of the difference between the administration of justice in a place in the interior where an European British subject cannot have counsel to represent him, and where there is no public opinion, and the dispensing of justice in Bombay, where there is a strong press and he can employ counsel to defend him.

That the Code of Criminal Procedure was exhaustively discussed in 1872, and, after having been in force for 10 years, was last year re-enacted, and came into force on 1st January 1883. A variety of alterations and amendments were introduced into the new code, after it had been submitted to the different local governments for their opinions, but no alteration was made in that part of it which related to European British subjects. This, your memorialists respectfully submit, in itself showed that no practical reason, no real urgency, existed to justify the withdrawal of what is perhaps the only legal privilege which European subjects in India possess against many, on the same principle, which Natives of rank and influence enjoy.

That in the discussion in the Legislative Council on the 9th of March, your Excellency was pleased to admit that at present there is no irresistible necessity for introducing this measure, although it might be an inconvenience to the administration of justice and a hardship to suitors if the present state of things were allowed to exist. And the Honourable Mr. Gibbs cited as an example Carwar (where Mr. Tagore was sessions judge), in the neighbourhood of which large railway works were being commenced. These works would, he said, bring European British subjects in considerable numbers into that district; and, if they were not tried by the sessions judge, they would either have to be sent by sea to Bombay, or have to march 80 or 100 miles through a district which at many times of the year was injurious to health. The illustration was an unhappy one, inasmuch as the railway referred to is being carried inland from Marmagao through Portuguese

territory, and not from Carwar. Supposing, however, a large number of Europeans had been attracted to the Carwar collectorate by the construction of a railway, your memorialists submit that it would have been preferable to have appointed an European magistrate to the district, instead of altering the law of the land to meet an isolated and exceptional case such as the one in question.

That in a country such as India, whose population is composed of so many different races, languages, and religions, it is in the highest degree impolitic to introduce fundamental changes in the law, affecting large and important sections, unless such changes are justified by urgent necessity; and your memorialists are of opinion that any such change now is premature and uncalled for.

That it has always been regarded as of great importance to the Government that harmony should exist between the Government and the general European population; and it is much to be regretted that Government did not take the precaution to elicit an expression of their opinion before the proposed Bill was introduced into the Legislative Council of his Excellency the Governor General.

Your memorialists therefore respectfully pray that your Excellency may be pleased to abandon the proposed alteration in the law.

And your memorialists, as in duty bound, will ever pray.

At the request, and on behalf of the memorialists,

(Signed) JAMES THORBURN, Chairman.

PROCEEDINGS of the SPECIAL GENERAL MEETING of the BOMBAY CHAMBER OF COMMERCE held on the 6th March 1883.

A SPECIAL general meeting of the Bombay Chamber of Commerce was held on Tuesday the 6th March 1883, at which the following members were present:—Mr. Cornforth (Aldridge, Salmon & Co.), Mr. Brandenburg (Bell, Brandenburg & Co.), Messrs. Russell and Macdonald (Benn, Ashley & Co.), Mr. Blascheck (A. Blascheck & Co.), Mr. Macaulay (Ewart, Latham & Co.), Messrs. Symons and Wilson (Finlay, Muir & Co.), Mr. Forbes (C. H. B. Forbes, & Co.), Mr. Sorabjee Framjee (Framjee, Sands & Co.), Messrs. Gaddum and Bythell (Gaddum & Co.), Mr. Glade (Glade & Co.), Mr. F. Adam (W. & A. Graham & Co.), Mr. Cotton (Greaves, Cotton & Co.), Messrs. Forrest and Stewart (Killick, Nixon & Co.), Mr. Moir (Lang, Moir & Co.), Messrs. Comber, Beaufort and Glazebrook (Lyon & Co.), Mr. Miller (C. Macdonald & Co.), Mr. Mackay (Mackinnon, Mackenzie & Co.), Messrs. Poole and Cassels (Peel, Cassels & Co.), Mr. Punnett (Punnett & Co.), Mr. Fachiri (Ralli Brothers), Mr. Mowat (Ritchie, Steuart & Co.), Mr. Sassoon (D. Sassoon & Co.), Mr. Steiner (Volkart Brothers), Mr. Wyer (Wallace & Co.), Mr. Ahmedbhoy Hubibbhoy, Mr. Dinshaw Manockjee Petit, Mr. Nanabhoy Byramjee Jeejeebhoy, Mr. Balfour (the Bank of Bombay), Mr. Wood (the B. B. and C. I. Railway Company), Mr. T. Forrest (the Chartered Mercantile Bank of India, London and China), Mr. Lowell (the Comptoir d'Escompte de Paris), Mr. Reid (the Oriental Bank Corporation), Mr. Parker (the P. & O. S. N. Co.), and Mr. Vizbhookundas Atmaram, (Narandas Rajaram & Co.), and many other gentlemen who were not members of the Chamber. Mr. James Thorburn, of the firm of Messrs. Sir Charles Forbes & Co., Chairman of the Chamber, presided.

Criminal Procedure Code, 1882, Amendment Bill.

The Chairman in opening the proceedings said:—"Gentlemen, you are all, I daresay, very well aware that at a meeting of the Viceregal Council held in Calcutta early last month, the Hon. Mr. Ilbert, the Legal Member of the Government of India, asked leave to introduce a Bill to amend the Criminal Procedure Code of 1882, which was only passed in the beginning of last year—in fact, it is only just a year old to-day, having been passed on the 6th March, 1882. The object of our meeting to-day is to consider the propriety of that measure becoming law or being carried any further. We

have come here to pronounce our opinion upon it, and to express our views as to whether the amendment should take effect or not. As all of you, who have been reading the daily press, are aware, the question has been very warmly discussed, more particularly in Bengal, and it has also attracted very general attention in England. It is quite right and quite proper that we, as the representatives of the European mercantile community and also of the non-official community of this city, should meet to discuss this question and express our opinion upon it, but I trust that nothing that will be said in this room to-day will have the effect or be likely to stir up ill-feeling either between ourselves and the Government of this country, or between ourselves and our Native fellow subjects. I think that a temperate expression of opinion will be not only more dignified, but it will probably carry more weight, and by adhering to that principle we shall avoid giving offence to or wounding the feelings or susceptibilities of those with whom I think it is our duty as fellow subjects of the same sovereign to be on a good and friendly footing. We were obliged, gentlemen, to call our meeting at a very late hour for various reasons, and I don't intend for that reason, and also for the reason that other gentlemen will speak presently to the resolutions which have been circulated amongst you, to go minutely into the subject of this proposed Bill myself, but I shall, at the same time, before sitting down, take the opportunity of saying that I disapprove of the measure, and I shall give some reasons for saying so. The first thing that strikes me is that there is really no pressing necessity for this measure at all, and I don't think that we require to go any further than Mr. Ilbert's speech in asking leave to introduce this measure to show that this is the case. The Criminal Code, as you are aware, was last amended previous to 1882 in 1872, and this very question we are met to discuss came on then; and although I don't wish to go minutely into what took place at that time, I may say that it was carried, by a majority of seven to five, that this amendment should not be given effect to. Mr. Ilbert takes great care to cite the opinions of the five who were in favour of that amendment being introduced into the measure, but he leaves out, or says nothing about, the opinions of the seven. I don't think it is likely that the whole of these seven were non-official members, for I think from our experience we may assume that no measure could be carried by a non-official majority in any legislative council in this country. To proceed, however, Mr. Ilbert starts by saying that from that time (1872) forward, when any suggestions were offered to the Government of India in the direction of the amendment of the Code the question always came up. Now, one would have thought that, if that had been so, the Government would have taken the very earliest opportunity of ascertaining the opinions not only of their own officers but of the public generally, and would have acted as speedily as possible on the opinions they might receive. You have only to read a little further on and it becomes quite apparent that for ten years they did nothing. This Code, as I have previously explained, became law a year ago to-day. The Government had completed all the arrangements they intended to give effect to, and this question never came up at all, and, as Mr. Ilbert says himself, the now historical Mr. Gupta's letter or his suggestion that this amendment should be made in the Code, came forward at the last moment when it was impossible to introduce it. What the Government afterwards did was to take the opinions of some of their own officers, and now we have the result before us. I think it is clear, as has been shown, that there is no pressing necessity for this measure in the shape of the proposed amendment. In fact, the only person whose name has been associated with it, as far as can be gathered, is Mr. Gupta, and, as Mr. Ilbert says, his letter gave rise to the discussion. That concludes what I have to say on that point, and I think there can be no question that there was no real necessity for introducing the measure, or any pressure brought upon Government to introduce it. Another point that strikes me, gentlemen, is this: it seems to me that the measure is premature. I have shown you, from what Mr. Ilbert said, that there was no pressing necessity for it, and I also think it unquestionably premature for this reason: this Bill will have the effect of touching the whole of the Mufassal European community, while, on the other hand, it will only affect the status of some six Native civilians in Bengal, and I think I have seen it stated only one here. Therefore I say that for that reason it is premature. I also say it is prema-

ture for this reason, that the Presidency towns are in a very much more advanced state than the Mufassal. It is proposed to extend this measure to the whole country, to the most outlying and backward districts, where you may say that civilization has been barely introduced, and I am of opinion that from that point of view the Bill is premature. If the Mufassal was as advanced as our Presidency towns are, then there might have been some reason for introducing a measure of this kind. I not only consider, however, that the measure is premature, but I also consider it has been introduced at a very inopportune moment. We all know that the Government have got at least three very important measures before them at the present moment, one of which at least introduces very radical and sweeping changes; and many people, including myself, I may say, think that the country is scarcely prepared or ripe for these measures. I cannot help thinking that, that being so, it was particularly inopportune to introduce the measure at the present time, when other important measures about which there has been and is likely to be a good deal of difference of opinion are pending. Then, gentlemen, I also object to the Bill, because it was brought forward without allowing the classes who are likely to be affected by it any opportunity of being heard. It has been, in a sense, sprung upon us, and not only upon us but, as you may have noticed in the debate to which I have referred, the Hon. Mr. Evans, one of the members of the Council, stated that he heard for the first time on the day of the meeting what the proposed measure was. He was ignorant of the character of the measure, and we also were ignorant of it until it was brought forward in the Council. It strikes me as being very much out of place to introduce a measure of this kind on the strength of the opinions elicited by a private circular, without the non-official community generally having an opportunity of expressing their opinion upon a measure which was to affect them so closely as this measure does. It is all very well for gentlemen who would have the administration of the law to express approval of it, but it looks rather different to those who are certain to be affected by the administration of it; and I cannot help thinking that when this private circular, which none of us have seen and which I should rather like to see, was sent round, probably, I think very likely, most of the officials to whom it was sent looked upon the question from a theoretical rather than from a practical point of view, without considering what effect the introduction of such a measure would have on the country. I notice further, gentlemen, that Mr. Ilbert says, in speaking of this circular, that its result was very remarkable. Well, I should think that he must have realised ere this that the effect of acting upon the circular has been very remarkable indeed. I think he must feel now, and I think that the Government of India must also feel, that they have made a blunder in bringing forward a measure of this kind without pressure, most inopportune, and without the public likely to be affected by it having had an opportunity of expressing an opinion about it. I will not say more now, other gentlemen having to speak to the resolutions which have been circulated amongst you. I think it is quite likely I may have touched upon some points which other gentlemen may speak upon, and, if such is the case, I hope that they will enlarge upon and enforce, rather than pass over, any point that I may have alluded to. With these remarks, gentlemen, I call upon Mr. Mowat to speak to the first resolution."

Mr. NANABHOY BYRAMJEE JEEJEEBHOY : " Mr. Chairman, before Mr. Mowat proposes the resolution, I should like to know whether you have received any letter from any one."

The CHAIRMAN : " We have received a letter from some of the members of this Chamber, and we have sent an answer to it. Have you got the answer ?"

Mr. NANABHOY : " It was the special desire of the members that it should be read before the meeting."

The CHAIRMAN : " I am asking whether you have got the answer ?"

Mr. NANABHOY : " That letter was for the information of the members."

The CHAIRMAN : " I don't consider that there was any necessity for its being read."

Mr. NANABHOY : " Then you rule that that letter shall not be read. I bow to your decision."

The CHAIRMAN : " I have not given any decision as yet." (Laughter.)

Mr. NANABHOY: "You say that the letter shall not be read."

The CHAIRMAN: "The letter to which you refer was received about half-past two. It objected to this Chamber taking up this question, and the answer which was sent to you by my directions was that we considered it quite competent for the Chamber to discuss this question; and if you had any reasons to give against its doing so, you ought to come here and state them."

Mr. NANABHOY: "We are going to speak, and we have come here to speak."

The CHAIRMAN: "Very well."

Mr. NANABHOY: "Then you rule that that letter shall not be read."

The CHAIRMAN: "There is no necessity that it should be read, seeing that you are here to speak and vote for yourself like any other member of the Chamber."

Mr. MOWAT said: "In proposing the first resolution, which runs thus:— 'That in the opinion of this meeting, the Bill for the amendment of the Criminal Procedure Code is, under existing circumstances, uncalled for and ought not to have been introduced without first eliciting the opinions of the non-official classes whom the proposed change in the administration of the law will affect,'—I would draw your attention to the temperate manner in which it is worded; and in the remarks which I am about to make I mean to be considerate towards the various races interested in the Bill lately brought forward by the Government of India. Throughout the length and breadth of this vast empire it has been the leading subject of discussion for nearly a fortnight, and it has been taken up with more than ordinary warmth in Bengal, and the voice of England has not been silent. I most earnestly trust the tension which now exists will find a solution long before November comes round. Although we have been later in approaching the subject than our friends in Calcutta and Madras, we are not behind them in the interest we take in any matter affecting the criminal law by which our British-born fellow-countrymen are tried abroad. In order to grasp the leading facts, let me point out what was done in 1872. This subject was then thoroughly discussed, and the debates which took place in the Supreme Legislative Council possess more than ordinary interest. Although five eminent names, including an ex-Governor of Madras and the late Governor of Bombay, appear on one side, seven gentlemen who have also left their impress on India took the opposite view, and one of those was the distinguished lawyer, Sir James Stephen, who had charge of the Criminal Procedure Bill. By this Act, which was the result of a compromise, Native magistrates in the Presidency towns were allowed jurisdiction over Europeans, but their power extended no further, and the reasons for so doing appear to me to be very strong. Gentlemen, with public opinion and a powerful press such as we find in the great cities, we can understand why a difference was made between them and the Mufassal. But, even in the Presidency towns, cases arise which are surrounded with more than ordinary difficulty, and which tax the keenest intellects of the bench and the bar. At a great social banquet which took place in Bombay a little over three years ago, and at which I had the honour to preside, a judge of the High Court, whose manly straightforwardness and upright character have gained for him a wide circle of friends among all classes, expressed himself thus:— 'The administration of justice in India and no less in Bombay is carried on with extreme difficulty, owing to the vast preponderance of unworthy testimony by the Native witnesses we have before us. A judge in this country can only act on the facts in the case before him; and it would be impossible for us to form our judgments satisfactorily were it not for the admirable manner in which the cases are prepared by able and experienced solicitors and clerks, and for the arguments and the ability which are bestowed upon those facts by accomplished barristers.' (Cheers.) If this be the case in one of the leading cities in the Empire, what safeguards must we insist on for the poor European in the districts? There are not able and experienced solicitors there; further, there are no accomplished barristers. But, gentlemen, I can tell you what will not be wanting. As a jurymen I have had to listen to suborned witnesses; they and the other surroundings will find a place. An oath or affirmation to the uneducated Native classes is of little or no value; and

are we to expose our countrymen to criminal charges made on such evidence? Far be it from me to speak otherwise than respectfully of Native magistrates whom this country chooses to honour with the dignity. As educated men we expect a great deal from them. But I hold that, in a criminal charge against a European, things may arise on which an Englishman or British-born subject only can form a correct judgment. If, therefore, the magistrate, witnesses and other surroundings are entirely Native, can we suppose that there will never be a miscarriage of justice? From the public press, which has lately been flooded with literature on this subject, we find that the Native community are far from agreed, for in common fairness we may put Mr. Khory's letter of this morning against that of the Honourable Mr. Tyahjee. A leading magistrate who had a great many years' experience in the Mufassal, when speaking to me quite recently, was not slow to point out the dangers which would beset the proposed alteration in the law. Perhaps a time will come when a revision of the existing Code may be considered with advantage; but it is clearly not now. The lower classes amongst the Native community must first be advanced. The non-official classes very justly complain that they have not been consulted in this matter, especially, seeing that they will be affected by Mr. Ilbert's proposed change. The legal and official classes, however, were consulted, and we learn that they have not been unanimous. English capital is now pouring into the country for reproductive works, necessitating a large number of European employes. They consist of railway servants, press and mill managers, cotton-agents and the like. In this Presidency, they are fewer in number than in the other two, but they are not the less deserving of our care and attention. (Applause.) Their probable future is a question for the sociologist, and I cannot say that I look upon it with anything like satisfaction. With the progress of works in the Mufassal their numbers will increase, but from the Natives who are making such rapid strides in education, they will have to suffer the keenest competition, a competition not likely to diminish. A large portion of those now labouring in the districts will never again behold the Island which gave them birth, while their families will have to make the best of life under all the disadvantages of a tropical sun. These are the classes most likely to be seriously affected by the new Bill; and, as they can least protect themselves, it is our duty to see that their rights and privileges are kept inviolate. They supply that cheap European labour which at the present time is indispensable in the formation of public works. As a rule, many of them are poor, and the fee necessary to secure the services of an English barrister or a first class vakil for defence in a criminal charge is more than they are able to command. Let us therefore be careful and not deprive our poorer countrymen of privileges which they have hitherto enjoyed, and to which they attach the highest value. According to the best authorities, they now do this without in any way interfering with the rights of the Natives of the country. Sir James Stephen's remarks are valuable. He says:—'In countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law; the Hindu has his personal law. Women who, according to the custom of the country, ought not to appear in court, are excused from appearing in court. Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? That whilst English courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention.' (Applause.) We have now to consider in a careful spirit what ought to be done? It is not too late for Government to withdraw the Bill, and this might be gracefully done in the interests of all concerned. No one wishes to see a race-feeling exist, and our Native fellow-subjects are no doubt as anxious on this point as we are. The Government is full of other schemes for their advancement, and it is a good

old maxim not to have 'too many irons in the fire.' A thing may be done with dignity and prudence to-day, which the force of events, if not checked may materially alter in a week's time. In conclusion, I appeal to the Imperial Government to withdraw a measure which under existing circumstances is unnecessary; I appeal to those in power to stem the current of class feeling which appears to have arisen on the other side of India, and which, if continued, may be fatal to the best interests of the country." (Loud applause.)

The Hon. W. M. MACAULAY: "Mr. Chairman and gentlemen,---When I consented to second the resolution which Mr. Mowat has just read, I did so in the firm conviction that it is not desirable for us to follow the footsteps of our brethren in Calcutta in the manner of our opposition to the Bill. I think it is very much to be regretted that some of the speakers there permitted themselves so far to forget what they were saying and their duty to their fellow subjects as to use language, which one, at least, has since apologised for. Such language cannot assist in achieving the object we have in view, but would rather damage it. In speaking to the resolution I shall, with your permission, first refer to the second portion of it; and I confess to a feeling of very deep regret that the Government of India have introduced a measure of such vital importance to a large and most important section of the community without consulting one individual of the community affected by the measure. It is true, as Mr. Ilbert informed the Council, that the various local governments were consulted, and that none of them objected to it. We are also told that the opinions expressed by the officials who had been consulted showed an overwhelming consensus of opinion in favour of the proposed change. But it was only a short time ago that a Bill which was passed through the local Legislative Council of Bombay, and supported by what was termed an overwhelming consensus of official opinion, was vetoed by the same Government that now attaches so much importance to the same official opinion. I think, therefore, this leaves a door open to them by which they can gracefully retire. They can with very good ground assign as their reason for retiring from the position they have assumed, that they have acted on incorrect information. We have been told that the judges of the High Court of Bombay have, with one exception, expressed themselves in favour of the measure. This may be so; but I think it not improbable---in fact, I have some grounds for saying so---that the opinion which was so given was more an opinion from a theoretical point of view, as the Chairman has observed, than from a practical point. If the judges of the High Court here, whom we all respect, as was justly observed, had been asked to express their opinion as to the practical application of these changes to the whole of the Mufassal districts of India, to the outlying provinces of Assam, the Punjáb and other partially civilised localities, I do not hesitate to say that there would have been amongst these judges more than one dissentient. (Hear, hear.) It is a source of great regret to every right-thinking person that the Government of India did not take the public into their confidence as they had promised to do. It was perfectly easy for them to have ascertained to a nicety what the English public would think of the measure by consulting public bodies like this Chamber. There are also planters associations, trade associations, and such other bodies in various parts of India, who, on a reference being made to them, could have told that the measure would raise a storm such as we are now experiencing. Happily for us, the circumstances of Bombay, and even the Mufassal of Bombay, render the measure less objectionable, if confined to Bombay, than it would be if applied to the whole of India. In this city, of which I have had a very lengthened experience, I know that the feeling of amity that exists between the two races of Europeans and Natives is very different from what exists on the other side of India. Here there is more mutual confidence and friendship than elsewhere. I have heard many intelligent Native gentlemen, several of whom rank amongst my friends, express their opinion that, for their part, they would prefer to have their affairs dealt with by European judges rather than by their own countrymen. We cannot on such a subject as this expect to have unanimity; but I think that there is a very strong section of the Native community who think that the Bill is not at all called for. In our daily mercantile experience we come in contact with numerous Natives; and in hundreds of cases they enter into contracts with Europeans, readily agreeing to refer their disputes to the

arbitration of Europeans. This, I think, speaks volumes for the confidence they repose in the integrity of Europeans. That the measure is uncalled for at present there cannot be the slightest doubt. Until the introduction of the measure the other day before the Supreme Council, so far as I know, the question had slumbered since the discussion which took place in the Council in 1872. Our Native fellow-subjects have lately been more than satisfied and gratified by the radical changes which have been introduced, or which, to speak more correctly, are about to be introduced; and these changes will give them a good deal of power in the management of their own affairs. It is a great pity, as the Chairman has pointed out, that for the benefit of a few Native magistrates the right of the many should be sacrificed. However, I think the number of magistrates who will be affected by the Bill is not so very small as the Chairman believes. I think in this Presidency alone, some half-a-dozen magistrates would be affected by it. But, even if the number were ten times half-a-dozen, it is no justification for introducing a measure which is calculated to stir up strife and re-open wounds which we hoped had healed. When the local self-government scheme was not yet put into force, it is most inopportune that the Government should have introduced further legislation, especially of such a character as this. I am afraid that, if the Bill be proceeded with, it will prejudice to a great extent the proper development of this scheme in the future. Great progress has been made within the last 20 years. Had it not been so, the modified change which permitted magistrates of Native birth to have jurisdiction over Europeans in the Presidency towns, would not have been brought about. But I repeat that it is premature at this early stage to introduce such a radical change from laws which have always been in force since the country has been occupied by our countrymen." (Applause.)

Mr. N. BYRAMJEE JEEJEEBHOY said: "Gentlemen,—I rise to propose an amendment to the proposition which is before the meeting. I am strongly of opinion that this Chamber will be exceeding its functions by committing itself to a proposition of this nature. Ever since the Chamber was first established, on 22nd September 1836, mainly owing to the exertions of Mr. Harry George Gordon, of Messrs. Ritchie, Stewart and Co., it has never ceased to interest itself in the commercial welfare of the city and port of Bombay, and has on numerous occasions rendered most valuable assistance and collected important information, not only to the advantage of the local commercial community, but to the Government of India, who has frequently consulted the Chamber on special important subjects. The Chamber has hitherto steered clear of all race-distinctions, and has shown itself most creditably above all race prejudices. This characteristic of the Bombay Chamber of Commerce has been acknowledged and emphasised by the admission of Natives. The Chamber has always been considered an influential and representative body, but since the accession of Native members, its representative power and character has increased considerably; and, instead of representing only one class of the vast mercantile community of this city, it now lays claim, and very justly too, to be the advocate and mouthpiece of the whole commercial community of this Presidency, and is no longer the European Chamber of Commerce, but truly and literally the Bombay Chamber of Commerce. What does the Chamber represent as a body? It represents Bombay commerce, and should be very careful not to curtail its representative character by lending its influence to politico-sectarian sentimentality and race questions. The Bengal Chamber and the Madras Chamber may be excused for their action in the matter of the Jurisdiction Bill, composed as they are entirely of European merchants. It is not very long, gentlemen, since this Chamber extended its scope of usefulness and influence, but during the short time that has elapsed since the joining of the Native members, things have gone on very smoothly and harmoniously, and it would be a thousand pities were that harmony and unanimity to be unnecessarily disturbed. I do not wish to enter now into the controversy about this Bill which the Government of India, all the local governments, Her Majesty's Secretary of State, and all the more distinguished officers of Government throughout India, considered necessary for the due administration of justice in this country; and all I wish to say is that such a proposition as that moved by Mr. Mowat should not, and could not, come

appropriately from a mixed Chamber of Europeans and Natives. If the European merchants of Bombay are desirous of giving expression to their views about the Bill, by all means let them do so at a public meeting of the European citizens. I am aware that I shall be in a very small minority, and the proposition will most probably be passed in spite of my humble opinion; yet, gentlemen, I conscientiously believe it to be my duty to make that opinion known and my feeble voice raised against what I respectfully submit and maintain is an unnecessary and untimely proceeding likely to disturb the harmony of the Chamber and to mar the goodwill which now happily characterises its proceedings. If this much-to-be-regretted action on the part of this Chamber will, as I apprehend it is sure to do, give rise to a strong counter-movement on the part of the Native community of Bombay, the Chamber will be responsible for creating any bad blood and angry feeling which may unhappily arise; and I am sure no one will be more sorry than I shall be if the commendable good feeling and harmony which exists in this Presidency amongst the different sections of our mixed community are needlessly disturbed or destroyed. Gentlemen, my first connexion with the Chamber dates so far back as 1865, and from that time up to now I have never known a single instance in which the Chamber lent its influence or countenance to any question of race or class distinctions or differences, and it ought not to do so now. (Applause.) With these remarks I beg to propose as an amendment—“That, in the opinion of this meeting, the action now proposed to be taken with regard to the Criminal Procedure Amendment Bill is one foreign to the object and purposes of the Chamber, and that it is highly desirable, for many obvious and weighty reasons, that the Chamber decline to take up any politico-sectarian question.”

Mr. SORABJEE FRAMJEE PATEL said: “Gentlemen, I rise with reluctance to second the amendment my friend Mr. Nanabhoy Byramjee Jeejeebhoy has proposed, for I consider it unfortunate for me at this juncture to be compelled to go against the wishes of gentlemen for many of whom I entertain the highest esteem. With not a few of them I have at times been associated in discussing important questions in a most friendly spirit, when serving as a member of the Committees of the Chamber. In fact, gentlemen, my connexion, including that of my father, with the Chamber, dates as far back as the last 35 years or more; and I must admit that in this long interval both he and myself have received every kind consideration at its hands, as I am sure my Native friends who have since joined have also experienced. I therefore feel it the more incumbent to appeal to your good sense and judgment to avoid, as far as it may be in your power, taking any step that may tend to disturb the harmony which has for many years so happily prevailed. What I beg of you, gentlemen, is to weigh calmly my request; for I am no less grieved at the disunion which your resolution will create in the Chamber than the ill-feeling and passions it is calculated to arouse throughout the great and varied commercial community of Bombay. The sequel of your step in this matter might unfortunately be either the holding of public meetings by those who are in favour of the Bill, or unpleasant, injudicious, and imprudent writings in the press. In both cases, no one, as you are aware, can answer for the lengths to which party feelings and passions may be carried by those who cannot command themselves. But the effect of all this will be certainly most disastrous to all concerned, and will excite bitter feelings and leave indelible reminiscences which it will take perhaps a full quarter of a century to efface. I have no wish, gentlemen, to enter into a lengthy discussion with such intelligent and liberal-minded members as those who are in favour of the resolution; but I cannot help drawing your attention to the fact that you cannot with propriety take up questions which are purely political and do not affect the general commercial interests of the community, nor could you take up class-questions, much less grievances, of a particular race. In support of this assertion, permit me to quote the very first of our Chamber’s rules and regulations. It states that ‘the object and duties of the Chamber shall be to encourage a friendly feeling and unanimity among commercial men on all subjects involving their common good, to promote and protect the general mercantile interests of this Presidency.’ I ask, with your permission, does the action which the Chamber is asked to take tend to ‘promote and protect the general mercantile interests

of this Presidency?' Will it 'encourage a friendly feeling among the commercial classes on all subjects involving their common good?' Does it come within the category of 'the removal of all acknowledged grievances affecting merchants (European and Native) as a body, or affecting mercantile interests in general?' Certainly not. I am sure, gentlemen, if you will only dispassionately weigh my reasons and arguments, supported by the fact that they are based on the fundamental rules and regulations framed by this Chamber, you will, I doubt not, adopt the amendment proposed by Mr. Nanabhoy and seconded by myself. In coming to a conclusion on this important question, I beseech you not to let your party feelings be roused by what indiscreet persons may have said and written elsewhere." (Applause.)

Mr. J. K. BYTHELL: "Mr. Chairman and Gentlemen,—I came here this afternoon determined not to speak, but after the remarks made by my friends Mr. Nanabhoy and Mr. Sorabjee I should like to say a few words. Their argument, as I understand it, is that the Chamber has exceeded its functions, and that its functions ought to be limited to what they term measures affecting our commercial welfare. They are also of opinion that we are proposing to take steps now which are likely to raise class-prejudices and to create race-feeling. It appears to me that the Chamber is not exceeding its functions at all. A great many of us have representatives in the interior; and if we deal with a measure which is introduced into the Legislative Council affecting our welfare and detrimental to our interests, it seems to me that it is quite within our functions to bring the matter before the Chamber of Commerce, which is the only body in Bombay representing our interests. (Applause.) I think the two gentlemen who have just spoken are mistaken when they are inclined to think that the resolutions before the meeting will, if passed, foster class-prejudices. Native gentlemen know that we not only welcome them when they propose to join us, but that we have invited them and asked them to do so. I can say that during the time I was officially connected with the Chamber I did all I could to get my Native friends to join the Chamber. I have always wished to get as large a proportion of Native merchants and Native gentlemen connected with trade in the Chamber as possible, in order that it might be strictly representative of Bombay commerce and not merely representative of a class; and I think that these gentlemen will say, on reflection, that it is quite possible for us to be very strongly averse to having any of our European *employés* in the interior tried by Native magistrates where we cannot get a European barrister, and yet have no feeling of antagonism towards our Native friends. Even in the case of Natives, cases have been known in which men have been tried and convicted in the interior with respect to matters which, if tried in Bombay, would have resulted immediately in an acquittal. Take, for instance, the old Cotton Frauds Act. You know that in Dharwar and in many other parts of India, where there was no public opinion and no press, Natives were prosecuted, convicted, and fined for mixing cotton from adjoining fields; and, as I have told gentlemen, Government servants, the same thing was being done here by European merchants, myself included, and that they should come and prosecute us in a place where we could get a barrister to defend ourselves. There is an example, and a very forcible example, between the justice in a place where you cannot have counsel to represent you and have no public opinion, and the dispensing of justice in Bombay, where you have a strong press and can employ counsel to defend you. (Applause.) It is quite possible for us to hold a strong opinion upon this subject and yet not be actuated by class-prejudices. (Hear, hear.) We don't object to Native gentlemen acting as magistrates in Bombay, where there is a healthy public opinion, and where we can have our fellow-countrymen as counsel; and it appears to me that, if race-questions are raised, it is not the Chamber who is to blame, but the Government of India who stirred this matter up. (Applause.) The old state of things did no harm to anybody. Mr. Macaulay thinks that the Chairman was mistaken in stating that only one gentleman would be affected by having these powers given to him if the Bill is passed; but I have been informed that this is correct, and that there is only one gentleman in the Presidency on whom these larger powers would now be conferred under the amendment if the Bill were passed; and, therefore, why stir up all this class-prejudice and set us all by our ears in

the manner that the Bill before the Government of India has done? (Hear, hear.) With reference to the question of giving more extended power to the Natives, I may say that I differ most materially from the Chairman that this proposed extension of municipal power is a mistake. When the Municipal Act, under which our corporation now sits, was introduced, we had 16 days consecutive debate in Poona about it, and I protested most strongly against the inhabitants, who are allowed to elect one-half of the members of the corporation, having no power virtually to do anything beyond voting the budget. In the same way, when the Mufassil Municipality Bill, which was passed in 1873, came on for consideration, I protested most strongly against the principle of the Bill, and contended that, so long as you had the collector in the chair, a great many official members on the board and all the non-officials elected by the chairman, it was a farce to call it a municipality at all. I would go in for giving the Natives much more power in these things; but while advocating their claims in that way, I must say I do object very strongly indeed to Europeans connected with our own firms in the interior being brought up before a Native magistrate where we cannot have the assistance of our own countrymen to defend them. It has been spoken of as an anomaly that these things should exist: I know that this is delicate ground to touch on; but as a newspaper said the other day, 'If you are going to take up that argument, our whole position in India is an anomaly.' So long as we are in India, anomalies must exist, and it appears to me that the best course for the Government of India to take is to leave such matters alone, unless it can clearly be shown that great injustice is being inflicted upon somebody. In the case of this Bill, it is impossible to show that injustice is being done. You cannot say that it is great injustice that half-a-dozen gentlemen invested with magisterial powers should not be permitted to try Europeans. We contend that this Bill, if passed into law, instead of allaying class-prejudices, will foster them to a great extent, and I hope that the Government of India will be induced to withdraw the Bill. I hope that the Native gentlemen connected with this Chamber will realise and see that it is quite possible for us to oppose this Bill and yet entertain very kindly feelings towards them, and that we are always very glad to see them amongst us." (Applause.)

Mr. VIZBHOCKANDAS ATMARAM said: "As a party signing the protest* which has just been read over to the meeting, I feel constrained to say a few words so as to explain fully the reasons which have induced us to adopt this course in reference to the action it is intended to be taken in the name of the Bombay Chamber of Commerce regarding the all-engrossing and really burning question of the day. At the time when we made up our minds to enter this protest we were fully alive to the fact that our motives in this matter are most likely to be misconstrued and misinterpreted, inasmuch as this question has unfortunately assumed an aspect which is gallingly painful to every true lover of India. It is certainly to be regretted that the tone and spirit of the opposition adopted in this matter in Bengal and Madras has called into existence race-antipathies, which certainly prevents a just, proper, and considerate treatment of this question; but, so far as this meeting is concerned, it is unnecessary for us to go into the merits and demerits of this question, because I can assure you, gentlemen, that, in arriving at this decision, we have not at all been influenced by any arguments which have been or can be advanced for or against the Bill now before the Viceregal Council. We feel that this is not the place for discussing political questions involving sectarian interests. The only reason which has induced us to oppose the passing of the resolutions proposed at to-day's meeting is that the action of the Chamber in this matter is not one which it could legitimately, on a plain and rational construction of the objects of its constitution, adopt. The objects and duties of this Chamber, as its very name tacitly implies, and as its rules and regulations expressly declare, are to concern itself in matters purely commercial. The rules further provide that the only occasions on which it can, by its constitution, communicate with public authorities, are when subjects of *general mercantile interest* render them necessary. I fully admit that the objects and duties

* Not read at the meeting.

of the Chamber are expressed in general words; but I venture to state that it is not possible to include even within these general words the subject of the so-called criminal jurisdiction, except by putting a very strained and far-fetched construction upon the words used in defining such objects and duties. The question really involved in the Criminal Jurisdiction Bill is purely political, appertaining to one section of the community. It is certainly one in which the parties who may feel affected by it have a right to plead their case; but we feel that it ought not to be in the name of a body which is formed for commercial purposes, and not for advocating political or sectarian interests. We are fully aware that it has been alleged that this Bill will indirectly and remotely affect the commerce of the country, but I feel sure that this is simply a sort of wild and vague fear savouring of an irrational panic, which could hardly be reasonably entertained by any sensible person. We fully admit that the Jurisdiction Bill may be said to affect the European community, and that may be a good reason for them as a body to make such representation as they may deem necessary, but we certainly think that, by itself, it is not sufficient justification for any action to be taken in the name of the Chamber. It is not improbable that legislative measures may hereafter be deemed necessary which may affect one or other of the numerous other communities existing in India, and which may also be, in some remote and indirect way, alleged to affect the commerce of the country. Now I ask you, gentlemen, could this Chamber of Commerce, consisting, as it does, of the most sensible and practical class of the people, establish by their action this day a precedent which may be quoted as an authority whenever it may be called upon to take up the cudgels for one community or other. I submit, gentlemen, for your careful consideration to-day, whether this Chamber, in the action it proposes to take, is not acting *ultra vires* and is not pledging itself to take action in matters which are purely and directly only political and involving sectarian interests. We feel satisfied that the resolutions proposed are not within the legitimate province of this Chamber, and we therefore feel it our duty to vote against the same, and to support the amendment just put before you by my friend Mr. Nanabhoy B. Jeejeebhoy."

The Chairman said that, before putting the resolution to the vote, he would say that, as their Native friends had argued for the most part that it was not competent for the Chamber to take up a question of this kind and discuss it, he would refer the meeting to the rule quoted by Mr. Sorabjee, in which it was stated that the object of the Chamber was "to obtain the removal, as far as such a society can, of all acknowledged grievances affecting merchants as a body, or mercantile interests in general." Section 10 of the rules bore more particularly upon the question at issue. It was to the effect that one of the objects of the Chamber was "to discuss any measures of public interest which might arise." He (the Chairman) thought that the present question was a measure of very public interest, and that they were quite competent to discuss it. He thought that the Native gentlemen present that day must be satisfied from what they had heard that there was no wish on the part of any of the speakers to arouse class-prejudices. Every speaker had been very careful to keep the race-question in the background whilst urging in general terms the impropriety of introducing this measure or of pressing it any further.

The amendment was then put to the meeting and lost by a large majority, only the three Native gentlemen who had spoken voting for it. The resolution was then put to the meeting and carried.

Mr. SORABJEE asked that the Chairman would record the protest against the discussion of the subject by the Chamber.

The CHAIRMAN said that the amendment would go on the records of the Chamber.

Mr. SORABJEE said that the protest had not been read.

The CHAIRMAN said that, if the practice was adopted of reading letters at the meetings, the Chairman would have only empty chairs to address. (Hear, hear.)

Mr. SORABJEE said that it was usually the custom to send a circular round, asking whether such and such a subject should be taken up or not; but this had not been done on the present occasion.

The CHAIRMAN said that a certain amount of discretion must be left in the hands of the committee.

Mr. BYTHELL suggested that the protest should be recorded.

The CHAIRMAN said that the protest had been recorded, and would go on the record of the Chamber.

Mr. NANABHOY said the first intimation that he had received that the meeting was to be held was at two o'clock on Monday, and he was not in office at the time.

The CHAIRMAN said that Mr. Nanabhoy came to the meeting quite prepared to discuss the matter, and he did not see what he had to complain of. He was informed that the circular calling the meeting was sent to Mr. Nanabhoy's office twice.

Mr. NANABHOY: "My house is not far away. I am living at Mazagon. The circular ought to have been sent there." (Cries of "nonsense," "absurd," &c.)

Mr. CLEMENT POOLE said: "I beg to propose 'that the following members of the Chamber, namely, the Chairman of the Chamber, Mr. M. Mowat, the Hon. W. M. Macaulay, Messrs. Bythell, Russell, L. R. W. Forrest and Blascheck, be appointed a sub-committee, with power to add to their number, to prepare a memorial to the Viceroy praying that his Excellency may be pleased to abandon the proposed alteration in the law.' At this late hour I would not recapitulate the remarks made by the previous speaker, but I will say this, that the names of the committee read out to you are a sufficient guarantee that the memorial which will be presented to Government will be drawn up with moderation and good sense, and will be free from expressions which have reached us from other places." (Applause.)

Mr. BLASCHECK said: "I second the resolution. I abstain from making any further remarks at this late hour."

The proposition was then put to the meeting and carried.

A vote of thanks to the Chairman concluded the proceedings.

No. 48.

MEMORIAL of EUROPEAN and ANGLO-INDIAN BRITISH SUBJECTS of NORTH BHAGALPUR, dated 18th April, 1883.

The humble Memorial of the undersigned European and Anglo-Indian British Subjects residing in the District of North Bhagalpur.

RESPECTIVELY SHOWETH,—That Your Excellency's memorialists view with great apprehension Mr. Ilbert's proposed Criminal Code Amendment Bill.

II.—That they consider that this Amendment Bill is quite uncalled for, inasmuch as the Natives of this country enjoy numerous privileges which are denied to Europeans; and that the passing of the proposed measure will subject British-born men and women to the caprices and whims of Native officials, who are utterly ignorant of the habits, customs and feelings of Europeans; and your memorialists are of opinion that Mr. Ilbert's Bill is calculated to militate against their interests and rights as Britons—rights which they proudly maintain throughout the civilised world.

III.—That your memorialists believe that, while the proposed Amendment Bill confers no new advantages on the Natives of this country, it completely deprives Britons of that privilege which they have always been accustomed to look upon as hereditary right, namely, that of trial by men of their own creed and colour: and that, should Mr. Ilbert's Bill be passed, Natives will be encouraged to institute vexatious and malicious cases in the criminal courts, on the most frivolous pretexts, simply with a view to harass and annoy European men and women, which, under the existing Criminal Procedure, they are unable to do.

IV.—That their long and intimate experience of the inhabitants of the Mufassal has shown them that most Natives themselves prefer to submit their lives and property to the impartial justice of European officials, rather than to the somewhat capricious judgment of their own countrymen. Is it to be

wondered at, then, that Europeans, too, should concur with them in this respect?

V.—That many cases in which European British subjects are involved require an acute and critical knowledge of their manners and customs; and your Excellency's memorialists are of opinion that a few years of legal study, even in Europe, are not sufficient to qualify Natives to administer that justice to Europeans which a better knowledge of their habits and sentiments would assure to them.

VI.—That the numerical disproportion between Europeans and Natives tends unmistakably to show that something besides physical force has helped in the subjugation and consolidation of this empire; and that any deprivation of the rights of the former would undermine that great and subtle force of which British prestige forms a not unimportant part.

VII.—That the experiences of the mutiny years showed that, had it not been for the Europeans of the Mufassal, Government would have found itself powerless against the exigencies of the moment; and that your memorialists are of opinion that those who poured out their blood in defence of that Government are now being but ill-repaid by the deprivation of one of one of their most cherished rights.

VIII.—In conclusion, your memorialists, trusting in the great sagacity and wisdom hitherto displayed by your Excellency, venture to express their earnest hope that their respectful protest may meet with your Excellency's serious and favourable consideration.

And your Excellency's memorialists, as in duty bound, will ever pray.

(Signed)

W. H. WOOD, AND 30 others.

No. 49.

MEMORIAL of the BENGAL CHAMBER OF COMMERCE, dated
19th April 1883.

The Humble Memorial of the Bengal Chamber of Commerce—

SHOWETH,—That your memorialists have considered the provisions of the Bill to amend the Code of Criminal Procedure, 1882, and they beg respectfully to submit to your Excellency in Council their deliberate and well-considered views respecting this measure.

Your memorialists venture to think that their views may be worthy of attention because they, and those with whom they are connected, are brought into direct and intimate relations with the Natives of this country. Those views are based upon long and wide experience. Your memorialists hope, moreover, that the fact that they do not apprehend any personal application of the proposed measure in their own case, and that many of them may probably retire from the country before the fruits of the proposed change mature, will strengthen rather than weaken the force of their opinion. That opinion may not coincide with the sentimental and theoretical views of persons devoid of experience as to the actual circumstances of the country, or of those who ignore differences of race, creed, education and habits; but your memorialists trust that their sentiments deserved to be treated as something far removed from blind panic, unreasoning clamour or factious opposition. It commonly happens, indeed, that Englishmen come to this country imbued with benevolent or sentimental theories, most of which are based on the assumption that political equality between the European and Native races is possible and desirable; but such equality your memorialists consider an illusion, an illusion which has, indeed, a semblance of generosity, but which very slight experience suffices to strip of its specious attractions and altogether to dispel. Those who have not penetrated beneath the plausible surface which the Oriental usually presents to European eyes may continue to cherish such an illusion; but it is impossible for those to do so who, like your memorialists, are brought into daily contact with the various classes of the people in the ordinary transactions of life.

Your memorialists as a body of mercantile men, are deeply interested in all that may affect the development of the resources of this country. They

recognise that their interests as representing European capital in this country are bound up with the security and prosperity of the country, and are, therefore, identical with the true interests of their Native fellow-subjects. Your memorialists feel sure that it is not necessary to press upon the attention of your Excellency in Council the disastrous effects of insecurity, or even a feeling of insecurity, upon trade and commerce. It is superfluous to insist upon so obvious a fact of experience as the sensitiveness of capital. As sense of insecurity, especially a sense of personal insecurity, arising from want of confidence in the administration of criminal justice, cannot fail to paralyse capital and to arrest its flow into the country, while it will unjustly impose serious sacrifices on those who have already invested their capital in reliance upon the existing state of security.

Your memorialists regret that their experience compels them to condemn emphatically the present Bill, and to view with distrust the policy which appears to underlie it.

Your memorialists trust that it is not too late to express such an opinion. They submit that the admission of Natives into the Civil Service does not in the slightest degree preclude objection to the policy of the present measure. The public would scarcely be expected to foresee the present development of that policy, since the Government itself did not contemplate such a result, even down to the framing of the present Criminal Procedure Code. Nor did the large mass of opinions and reports submitted when that Code was in preparation indicate such a result as desirable, much less as inevitable; for, although nearly two hundred opinions were then laid before your Excellency in Council, only one faintly foreshadowed any such measure. The Government admitted Natives into the Civil Service subject to the restrictions at present existing. Had the Government then contemplated perfect equality of powers, it would doubtless have considered itself bound in fairness to make known its views at that time. Had any such development been foreseen, it would undoubtedly have called forth the same objection as is now urged against the present measure; which measure, it is now said, is a necessary consequence of the step then taken.

Your memorialists further venture to submit that neither the present measure, nor the policy upon which it appears to be based, are necessary or legitimate developments of the spirit of Her Majesty's Proclamation of 1858. If that Proclamation involved such changes as the present Bill contemplates, further advance in the same direction would be inevitable; so that the finality claimed for this measure could not exist. Her Majesty's Proclamation, however, does not profess to prescribe or define the course of future legislation, which is by law placed under the control of your Excellency in Council.

Nor does Her Majesty's Proclamation declare, or even contemplate, that any larger share in the government or administration of the country than was then enjoyed by the Native races should be conceded to them, or that those races should attain greater power or influence. It declares that, "so far as may be," all Her Majesty's subjects, "of whatever race or creed," shall be freely and impartially admitted "to offices the duties of which they may be qualified by their education, ability, and integrity duly to discharge." This declaration is not confined to any class of Her Majesty's subjects, and leaves their employment to be determined, subject to the existing law, by their fitness and other circumstances of the case.

The Proclamation initiated no new policy.

The view above submitted is that adopted by successive Governments, including the Government which framed and issued the Proclamation. Their action shows that they did not consider themselves bound to accord to the Native races any greater share of the administration than the circumstances of the time rendered fitting. To attribute to them a different view would be to charge them with deliberate disregard of the settled policy of the country, since Natives were not, until recently, even eligible for the Civil Service.

Moreover, your memorialists venture to submit that it would not have been competent to Her Most Gracious Majesty, by Proclamation, to prescribe the course of future legislation—a consideration which appears conclusive as to the true scope of the Proclamation in question.

Your memorialists, therefore, deem themselves at liberty to consider this proposed measure on its merits, both as regards its policy and its detailed provisions.

The policy of the Bill is set forth in the "Objects and Reasons," and has received further elucidation and development by your Excellency in Council.

All parties agree in considering that policy to be the policy of forthwith conceding a larger share in the administration to the Native races. The conclusion that this is the policy of the Bill is forced upon your memorialists. The same conclusion is eagerly adopted by the Natives.

Your Excellency's speech in Council appears to confirm this view, since your Excellency based the defence of the Bill, as your memorialists understand, upon the Queen's Proclamation, which your Excellency appeared to consider a declaration of the principle of complete equality between the Englishman and the Native. The statement of Objects and Reasons of the Bill is to the same effect; for it states that "it was thought anomalous that, while Natives of India were admitted to the Covenanted Civil Service and held competent to discharge the highest judicial duties, they should be deemed incompetent to be justices of the peace and to exercise jurisdiction over European British subjects outside the Presidency-towns"; it speaks of removing the present bar upon the investment of Native magistrates in the interior with powers over European British subjects," and then proceeds to say—"The Government of India has accordingly decided to settle the question of jurisdiction over European British subjects in such a way as to remove from the Code, at once and completely, every judicial disqualification which is based merely on race-distinctions."

Your memorialists can discover no anomaly in the existing system beyond the natural anomaly that races differ, with the result that the subject race is unfit to govern the dominant race.

The Bill ignores this difference, and, assuming equality for the purposes contemplated, proceeds to bestow upon certain classes of Natives a further share in the administration of justice, irrespective of race, and as a matter of right. The policy might have been more plainly stated; but it is impossible to escape the conclusion at which all parties have arrived as to its character.

This policy rests upon the assumption that a Native who has attained a certain position in the administration is, in all respects, as well qualified as an Englishman to perform all duties which an Englishman of similar position may be set to perform. To proceed to apply this theory—a theory requiring a bold disregard of fact and experience—to so delicate a matter as the administration of criminal justice between the two races, is surely not warranted much less required, by the Queen's Proclamation. That Proclamation expressly provides for actual fitness in the person employed, of whatever race he may be, and significantly points to education and integrity as elements in the qualification. Your memorialists submit that no reasonable person can possibly ignore the difference of character arising from difference of race, or even to assume that, even with like education and similar surroundings, such difference could be eradicated.

But here the original difference of character is heightened by difference of education, influence, habits, creed and aims. It appears to your memorialists that the policy in question rests upon a confusion of ideas with regard to the Proclamation, namely, that the absence of disability implies fitness.

This policy your memorialists view with the utmost anxiety, and they regard the necessity of discussing it as a public misfortune. They cannot admit the assumption upon which it rests, or allow that a few years in England can possibly qualify Natives of this country to take the same share in the administration of the country as Englishmen. But the Bill does not contemplate that class alone or chiefly, but includes within its purview those educated in this country, surrounded by every influence which tends to widen the gulf of race distinction.

Your memorialists are fully sensible of the wisdom of laying the foundations of government deep in the welfare of the governed, and they are always ready, when consulted, to approve any well-considered measures tending to the real benefit of the Natives. But your memorialists are convinced that it is cruel to them and mischievous to the State, to affect to countenance such

illusions as the policy of the present Bill seems calculated to encourage. Such illusions, if persisted in, are, in their opinion, calculated to cause grave and serious disaster throughout India, and that, too, at no very remote period of time.

This Bill, when originally brought forward, was rested solely on the ground that it would remove an anomaly. There was no suggestion of administrative difficulty, nor has any such difficulty been suggested as might not be surmounted without public detriment. It has, indeed, been stated that, inasmuch as one-sixth of the Civil Service may consist of Natives, there must ultimately be administrative difficulty; but it is obviously impossible at present to foresee whether it may not be quite easy to overcome that difficulty should it ever occur. It is, at any rate, sufficiently clear that no serious difficulty has at present arisen, or can at present arise. The suggested difficulty is, therefore, purely speculative.

On the other hand, the immediate mischief actually resulting from even the introduction of this Bill is, unfortunately, no longer a matter of speculation. Bitter race-feelings have been evoked by what is felt—and your memorialists think rightly felt—to be an unnecessary, ill-judged, and ill-considered attack on a justly cherished right. A wise statesmanship would, they venture to think, shrink from evoking such feelings, and would certainly not encounter such mischiefs in pursuit of any merely speculative good. But the harm does not stop there; the proposed tribunals will necessarily invite distrust instead of commanding that public confidence which is essential to the due administration of justice. Here surely is an administrative difficulty of sufficient magnitude to disturb all who value the efficient administration of justice. The mischief, moreover, does not stop even here; for out of the evils indicated mischievous results will arise, at present incalculable—distrust engendered, paralysis of enterprise and discouragement of the naturally loyal; these are but some of the baneful results which may be reasonably apprehended. Such fears, it is said, have been often entertained and as often falsified. It is true that English feeling as to matters affecting the relations between the two races is highly sensitive. This, however, seems to your memorialists the reverse of a reason for disregarding it; seeing that such sensitiveness arises from a perception of the danger involved in any disturbance of the relations at present existing. Your memorialists regret that they cannot admit that such fears have been unfounded in times past, for they feel, that the position of Englishmen in India had been lowered, and consequently the foundations of British security perceptibly affected by every similar measure in the past.

Your memorialists, judging from past experience, cannot help fearing that like effects will accrue from the present measure, and that it must tend to deprive Englishmen settled in this country, comparatively few and often widely scattered, of that position which is universally felt to be essential not only to their welfare and to the safety of themselves and their families but also to the very existence of British rule. It is to such settlers that the real acquisition of India as an integral portion of the Empire may be traced and justly credited. It is the beneficent flow of peaceful commerce which has turned the desolation of conquest into fruitful prosperity.

And to what end is society to be thus moved to its depths?

Your memorialists respectfully submit that the susceptibility of the entire British community deserve to be in the eyes of the British Government as worthy of consideration as the susceptibilities of a few Native officials. There can be no pretence of any injustice to be remedied, for these gentlemen entered the service upon the footing of the existing law, and, indeed, could not have obtained admission on the footing now claimed for them without exciting the same feelings as have now been aroused. The proposed measure seems to your memorialists to be in every way unjust and impolitic, uncalled for by administrative necessity, calculated to evoke feelings of race-antagonism which prudent statesmanship would allow to slumber, tending to create distrust of the policy of Government, and to destroy confidence in the administration of the criminal law.

Your memorialists do not desire to dwell unnecessarily upon the details of the proposed measure. They venture, however, to call attention to a singular inconsistency in the utterances in Council respecting one provision of the

Bill. The supposition that a Native would never be appointed a cantonment magistrate was welcomed as obviating what could not be denied to be a danger—the danger, namely, of allowing British soldiers to be tried by Native magistrates. But surely it is part of the anomaly sought to be removed that a Native should not be so appointed; and it is strange to set about removing one anomaly in reliance upon the existence of another. The satisfaction, however, created by the existence of that anomaly is rudely shaken when it is remembered that a cantonment magistrate may become subordinate to a Native collector, who, as his superior magisterial officer, is in the exercise of his discretion, entitled to assume jurisdiction in criminal cases ordinarily triable by a cantonment magistrate.

The Bill also, while empowering Natives to try Europeans, excludes Europeans from such functions; unless, indeed, such Europeans are members of the Covenanted Civil Service, assistant commissioners in non-regulation provinces, or cantonment magistrates. The Bill, therefore, in pursuit, as is professed, of race-equality, creates race-inequality, and disqualifies, as was pointed out in Your Excellency's Council, a considerable and useful class of magistrates, who would otherwise have exercised the function of trying Europeans with benefit to the community, as numerous members of this class have hitherto done.

In conclusion, your memorialists feel confident that your Excellency in Council, solicitous for the welfare and prosperity of all classes of Her Majesty's subjects, will accept the results of practical experience, and will give such weight as may be due to the views herein submitted. If, as your memorialists trust, those views recommend themselves as just,—if the opinion of your memorialists is, as they venture to hope, entitled to weight, as representing the feeling of the European mercantile community,—if your Excellency in Council is satisfied that in passing this measure you will be disregarding the feeling of the mercantile and European community, even should that feeling fail to meet with sympathy from your Excellency in Council,—then your memorialists cannot doubt that your Excellency in Council will not shrink, in the interests of good government, from withdrawing the present Bill without further delay—a result for which your memorialists humbly pray.

On behalf of the memorialists—

(Signed) R. MILLER,
President, Bengal Chamber of Commerce.
(Signed) H. W. I. WOOD,
Secretary, Bengal Chamber of Commerce.

No. 50

MEMORIAL from a COMMITTEE of the ORISSA PEOPLE'S ASSOCIATION, (dated 19th April, 1883.)

The Humble Memorial of the Committee of the Orissa People's Association, Cuttack—

RESPECTFULLY SHEWETH,—That your memorialists find themselves in duty bound to convey to your Excellency their sincere and heartfelt gratitude for the introduction into your Excellency's Council of the Bill for the amendment of the Criminal Procedure Code, with a view to remove certain invidious distinctions as to the trial of Native and European criminals—distinctions the existence of which is a stigma to a Christian Government, to a Government that professes to rule according to principles of justice and piety.

That, in doing so, they heartily agree with the British Indian and other Indian associations and societies in not convening a public meeting for contradicting the statement that the Natives are not interested in the measure for the reasons stated by them, namely, for avoiding unpleasantness by setting class against class and embittering feelings. For similar reasons, your Excellency's memorialists content themselves with presenting this

humble memorial, at the same time feeling assured that, when your Excellency's Government, in the discharge of its just and righteous duties, has taken up the matter, after noticing the growing discontent among the Indian nations expressed in several of their public papers, the Amendment Bill will be passed, and that all the attempts of its enemies to prevent it will prove fruitless.

That your Excellency's memorialists further beg to state that, in some of the public papers of England, it is stated that the Natives are not at all interested in the said Amendment Bill of the Criminal Procedure Code, and that for that reason they do not agitate the point in question. But your Excellency's memorialists humbly beg to state that the current of such agitations has from a distant past been running down to the present day, and that the editors of those papers make such a statement out of ignorance, or wilfully represent the fact to influence the minds of the honourable members of the British Parliament.

That your Excellency's memorialists entertain ardent hopes that, by removing all distinction of race, country and religion, your Excellency will firmly establish the glory of Her Majesty's Government in India.

And your memorialists, as in duty bound, will ever pray.

(Signed) DENONATH BENERJEE,

Officiating Honorary Secretary to the Orissa People's Association.

No. 51.

LETTER from the UNDER SECRETARY to GOVERNMENT, BENGAL, to SECRETARY to GOVERNMENT of INDIA, LEGISLATIVE DEPARTMENT.—(No. 373 J.D., dated 30th April 1883.)

I AM directed to submit to the Government of India the accompanying copy of a letter, dated 19th instant, from the Honorary Secretaries, European and Anglo-Indian Defence Association, and its enclosures in original, being a memorial and connected papers from the Eurasian and Anglo-Indian residents of Monghyr on the subject of the Criminal Procedure Code Amendment Bill.

I have &c.

(Signed) W. D. BLYTH.

Enclosures referred to in preceding Letter.

LETTER from the HONORARY SECRETARIES, EUROPEAN AND ANGLO-INDIAN DEFENCE ASSOCIATION, to OFFICIATING SECRETARY TO GOVERNMENT, BENGAL, dated 19th April, 1883.

We are directed by the Council of the European and Anglo-Indian Defence Association, to forward herewith* in original, a memorial from the Eurasian and Anglo-Indian European British subjects residents of Monghyr on the subject of the Criminal Procedure Code Amendment Bill, and to request that you will forward it through the proper

* A memorial in original from the Eurasian and Anglo-Indian European British subjects, residents of Monghyr.

One annexure, extracts from the memorial of the inhabitants of Cawnpore, paragraphs 5, 6, 7 and 8.

channel to his Excellency the Viceroy and Governor General of India in Council.

We are &c.,

(Signed) J. W. FURRELL.

„ S. E. J. CLARKE.

MEMORIAL of EURASIAN and ANGLO-INDIAN EUROPEAN BRITISH SUBJECTS of MONGHYR to HIS EXCELLENCY THE VICEROY AND GOVERNOR GENERAL OF INDIA IN COUNCIL.

The Memorial of the undersigned Eurasian and Anglo-Indian European British Subjects, Residents of Monghyr in Bengal.—

Respectfully sheweth,—That your memorialists have learnt with deep concern the proposed amendment in the Criminal Procedure Code whereby

Native magistrates in the Mufassal have been vested with criminal jurisdiction over European British-born subjects.

That your memorialists have seen and considered the memorial of the Eurasian and Anglo-Indian Association to your Excellency on the subject.

That your memorialists fully appreciate and concur in the views and reasons therein expressed and given against the introduction of the proposed change in the existing law, and your memorialists pray that the same may be taken and read as part of this their memorial.

That your memorialists have also seen and considered the memorial of the inhabitants of Cawnpur to your Excellency on the same subject.

That your memorialists entirely endorse the views expressed in paragraphs 5, 6, 7 and 8 (copies of which are hereto annexed) of the said memorial, and pray that the same may also be taken and read as part of this their memorial.

Your memorialists therefore humbly pray that the Criminal Procedure Amendment Bill may not be passed.

And your memorialists as in duty bound shall ever pray.

(Signed) E. T. SHEARIN, and 15 others.

EXTRACTS FROM MEMORIAL OF INHABITANTS OF CAWNPUR.

Paragraph 5.—Your memorialists are so strongly convinced that no change in the law is necessary or expedient, and they most earnestly deprecate any further attempts on the part of those Europeans in India whose power is great, but whose presence is temporary and not permanent, to encourage the Natives of India to agitate for positions in the administration and government of India on the principle of equality, while the following indisputable facts exist, namely :—

- (a) The Natives of India are admittedly subject races, bearing the greatest enmity and animosity towards each other, dependent on European soldiers to keep the peace, and, except an insignificant number of individuals in the Presidency towns (who owe everything to compulsory education and contact with Europeans), are wholly unfit for independence.
- (b) They have unquestionably more of liberty, peace and protection than any other people in the world who are subject to foreign dominion.
- (c) They already stand equal before the law, subject to the same Penal and Civil Codes as the dominant race.
- (d) They have the benefit of personal laws to a greater extent than Europeans; Natives of rank and women being exempted from attendance in courts of justice.
- (e) The number of Europeans in India is comparatively so small that to admit and enforce the principle of equality without reservation and without considerations of race or feeling in every department would reduce British power in India to a cypher and make the British occupation of India unmaintainable, and eventually produce the same state of anarchy and disorder that prevailed before its conquest by the British.

The principle of equality has no application among the Natives themselves as their domestic and social institutions prove.

Paragraph 6.—Your memorialists further submit that, with so many indications present in the minds of the people of India, namely :—

- (a) their acknowledged unfitness for independence or self-government;
- (b) of their, with few exceptions, acknowledged unfitness to exercise jurisdiction over the liberty and lives of even their own fellow-countrymen;
- (c) of the necessity for excluding them from exercising any power except under proper safeguards;
- (d) of the necessity for excluding them from appointments in the army and taking part in the defence of their country against disturbers of the *pax Britannica*; to propose to grant them the principle of equality to the extent of permitting them to sit in judgment upon members of the dominant race seems to your memorialists residing in the Mufassal an unnecessary and dangerous innovation, which for many generations to come your memorialists

(speaking on behalf of their wives and children) will never calmly acquiesce in or submit to.

Paragraph 7.—Your memorialists unhesitatingly aver that, should this Bill pass (which has already been spoken of by the Native papers as “an instalment” of what is to follow), there will be no adequate security or safety for your memorialists and European residents in the Mufassal, and the present peaceful state of India will, on the punishment of a European by a Native, be liable to disturbances of such a character as, if once set on foot, will produce greater anarchy and disorder than has been known in India for centuries.

Paragraph 8.—Your memorialists would further observe that they perceive in this Bill, in which the principle of equality is affirmed, the prelude to others of a similar character calculated to destroy British interests in, and exclude Europeans from, Mufassal India. That, if such is the ultimate aim and policy of the Government of India, your memorialists submit that the same should be boldly announced and notified to your memorialists and the thousands of Europeans entering into and settling in the country.

No. 52.

LETTER from the EASTERN BENGAL RAILWAY COMPANY to
PRIVATE SECRETARY to His Excellency the VICEROY AND
GOVERNOR GENERAL OF INDIA. (No. 2,345, dated 2nd May,
1883.)

IN accordance with a resolution come to at a meeting of the European employés of this Company, held at Sealdah on the 5th March 1883, I have the honour to transmit herewith a memorial duly signed by all the European British-born employés of the Company, and to solicit that it may be laid before His Excellency the Viceroy.

I have, &c.,
(Signed) R. D. MORRISON,
For Agent.

MEMORIAL of EUROPEAN BRITISH-BORN EMPLOYÉS of the EASTERN
BENGAL RAILWAY to His Excellency the Most Hon. the MARQUIS OF
RIPON, K.G., P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General
of India in Council, referred to in preceding letter.

The Memorial of the European British-born Employés of the Eastern Bengal
Railway Company—

Most humbly and respectfully sheweth—

1. That your memorialists have read with much concern the provisions of the Criminal Procedure Code Amendment Bill which was introduced into your Excellency's Council by the Hon. Mr. Ilbert on the 2nd February 1883, by which it is sought to invest Native civil servants with jurisdiction over the European British subjects in criminal cases.

2. That your memorialists humbly submit that they have a constitutional right to be tried only by their peers and their countrymen, and that in India they have always enjoyed the right of being tried by men of their own nationality, and have done nothing whatever to forfeit that right.

3. That it was with this knowledge that your memorialists have such a right, and with no apprehension that they should not continue to enjoy it, that many of your memorialists took service in this country, and, encouraged by their employers, brought out their families and domiciled them here.

6. That, although the Natives of India have by force of conquest become subjects of the British Crown, they are still aliens both in nationality and religion; and a European British subject appearing before a Court presided over by a Native magistrate or judge would be essentially before a foreign tribunal, without the advantage of that consular protection which he would be entitled to in a foreign country.

5. That, in the humble opinion of your memorialists, the proposed amendment of the existing law is not only inopportune but is calculated to engender class-feeling and race-antagonism, which your memorialists, who are collaborators with a very large number of Native railway employés, cannot too strongly deprecate as being injurious in the extreme to European and Native alike and to the public service generally.

6. That your memorialists would draw your attention to the fact that no dissatisfaction has been expressed by the Native community generally on the subject of the immunity from Native jurisdiction now enjoyed by European British subjects, and that none of their privileges have been affected by the existing order of things. In proof that the present law, as a piece of class-legislation, has been a success, and that cases coming under it should be inquired into and tried by trained European magistrates, your memorialists beg to quote the opinion expressed by the Hon. the Legal Member of Council at the meeting of your Excellency's Council on the 2nd ultimo, in which he said: "And as to facts which we have to deal, no one who has studied the statistics and reports of the cases involving charges against European British subjects can fail to be struck with two things: first, that, as compared with the great mass of ordinary criminal business, they are *exceptionally rare*; and, secondly, that they are *exceptionally troublesome and difficult*."

7. That your memorialists as railway employés are more likely to be injuriously affected by the proposed change in the law in respect of jurisdiction over European British subjects than other classes of the European community: first on account of, in many cases, their isolation at stations far removed from European centres and Courts of revisional jurisdiction; and secondly, owing to the great amount of technical and scientific evidence that is usually introduced into railway criminal cases, and which would be almost, if not quite, unintelligible to a Native magistrate; whilst a protracted trial, with all the expense attendant thereon, followed probably by an erroneous and perhaps ruinous judgment, might not unreasonably be expected from the judge's want of technical knowledge and experience in subjects with which European judges are all more or less acquainted.

8. That your memorialists, whilst fully and cordially recognising the right of Natives to a share in the administration of the laws of this country, beg to point out that the proposed amendment, if it becomes law, will place European British subjects at a disadvantage when compared with the mass of the population of India, as they will then be subject to the jurisdiction of magistrates and judges whose ideas of Western civilisation, manners, and thought will have been gained only in India or during two or three years' study in England at some English tutor's or cramming establishment, preparing for the Civil Service; whereas now European British subjects are triable only by highly trained and educated Englishmen, who have an intimate knowledge of their inner life, habits, and manners which it is impossible for their Native coadjutors to obtain.

9. That your memorialists would draw attention to the fact that a Native magistrate of any class exercises, under section 445 of the Criminal Procedure Code, nearly if not all the powers which a justice of the peace can exercise in England, inasmuch as he can issue process of arrest, making it returnable to himself or to any other magistrate having jurisdiction.

10. That your memorialists would deprecate any argument founded on the basis that, because Natives exercise jurisdiction over European British subjects in Presidency towns, they should therefore exercise that jurisdiction outside Presidency towns, as obviously misleading, seeing that the respective positions are widely different. In a Presidency town, any high-handed proceeding of a Native magistrate would not of necessity imperil the liberty of the subject, as an immediate application could be made to the High Court, and a suspensory writ obtained within an hour; but in the Mufassal the European British subject would be entirely at the mercy of the local Native authority, and would be liable to be degraded by a week's imprisonment, perhaps with hard labour, before a distant High Court could be moved by the most energetic advocate to suspend the sentence.

11. That your memorialists, in conclusion, would respectfully submit that the protection which has been hitherto afforded them by the existing law is

no more than they are entitled to under the British Constitution; and, as Muhammadans, Hindus, Parsis, and many other races and sects in India are protected in the exercise of their own peculiar laws and customs by class-legislation, your memorialists pray that the rights and liberty so dear to them, and which are menaced by the proposed amendment, may not be withdrawn.

And your memorialists will ever pray.

(Signed) F. PRESTAGE, and 196 others.

No. 53.

MEMORIAL of LADIES residing in BIHAR to His Excellency the Most Hon. the MARQUIS OF RIPON, Viceroy and Governor General in Council.

MY LORD,—You have expressed yourself as willing to listen to any remonstrances against the proposed change in the Criminal Procedure Code which are based on arguments consistent with the declared policy of the Crown and Parliament. We, who are Englishwomen living in Bihar, ask you to listen to our remonstrances; for the mainspring of that policy is justice to all classes of Her Majesty's subjects, and we submit that, should the provisions of Mr. Ilbert's Bill become law, they will do us grievous wrong.

Our grounds for remonstrating as Englishwomen against the proposed change in the Criminal Procedure Code are as follows:—

1. We have no reason to expect that Native judges will do us justice. We do not raise the question of their integrity, nor do we impute to them any want of will to be just. Our argument is that they can have no such knowledge of the characters and motives of civilised and educated women as shall fit them to judge them.

We see that in the social systems of India women are ignorant and enslaved. We see that up to this time the vast efforts of philanthropists have effected comparatively nothing to redeem them. We see the men of their races insensible to their degradation, if not contented with it. Therefore, we assert that men born or bred on such a system are unfitted to become the judges of women of a totally different type of society.

2. Believing, as we do, that we cannot expect justice at the hands of Native judges, in consequence of their ignorance of us, we beg to point out that one of the greatest of social evils would follow from the carrying into law of the provisions of Mr. Ilbert's Bill, namely, a considerable class of those amenable to them would be exposed to the uncertainty and anxiety which wait upon distrust of the efficiency of the administration of the law.

3. We have no desire to add to the torrent of angry words which the proposed change in the Criminal Procedure Code has excited, but in conclusion we entreat you, for the sake of peace and concord, to withdraw this Bill. The harm which has already been done can never be undone, but possibly may be mitigated by removing the cause. It appears to us that the good it purposes to effect is truly insignificant compared with the evil it has caused and would continue to cause. We cannot expect you, in your high position, to appreciate the difficulties we feel in the way of cementing friendliness between ourselves and our Native neighbours; but these difficulties exist, and we earnestly and deliberately say that your proposal has added to them. We entreat you again, in justice to us, to listen to our prayer that you will withdraw this Bill. We, too, have been confided to your care by our Queen, and we, too, claim your consideration and justice.

(Signed) ALICE HUDSON, and 731 other ladies.

No. 54.

LETTER from the HONORARY SECRETARY, MYSORE PLANTERS' ASSOCIATION, to His Excellency the GOVERNOR GENERAL OF INDIA IN COUNCIL. (Dated 26th April 1883.)

I HAVE the honour to enclose your Lordship a copy of resolutions passed at meeting of the Mysore Planters' Association held in Chuckmuglew on 19th ultimo, and pray that your Lordship may give the same due consideration, as being the expressed opinion of a body of European gentlemen, many of whom have spent a great portion of their lives amongst the Natives of India.

I have, &c.,
(Signed) C. H. BROWNE.

RESOLUTIONS passed at an Extraordinary General Meeting of MYSORE PLANTERS' ASSOCIATION held in Chukmuglew on 19th March 1883, and referred to in preceding Letter.

1. That gentlemen not members of this Association be admitted to this meeting.
2. That, in the opinion of this Association, the alteration in the law proposed by Government, in the Bill entitled a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, demands the concerted opposition of the European community throughout India, as being an unnecessary sacrifice of a highly prized and necessary right to ideal legislation, as certain to depreciate the value of European capital invested in the Mufassal, and as certain to lead to the harassing of the European in the Criminal Courts.
3. That the President and Honorary Secretary of this Association be appointed to take such steps in opposing this Bill as may be deemed most expedient, and to receive subscriptions towards the fund opened by the Chamber of Commerce, Madras, for the purpose of defraying expenses incurred in the opposition.
4. That a copy of these resolutions be forwarded to the Resident of Mysore for his information, and with a request that he will forward the same to the Governor General in Council; also one to the Chamber of Commerce, Madras, with a hearty vote of thanks for the action taken by that body in defence of a privilege so necessary to the European in the Mufassal.
5. That, in addition to the subscriptions guaranteed by the sub-associations to the fund inaugurated by the Chamber of Commerce, a subscription list be circulated amongst the Europeans in this district, whether members of this Association or not.

No. 55.

MEMORIAL from Mr. W. R. FINCH, Manager, Indigo Concern, Shahpore Oondie, Tirhoot (dated 12th May 1883), to the Most Noble the MARQUIS OF RIPON, K.G., Governor General of India.

MY LORD MARQUIS,—It is with feelings of the most profound respect for your honesty of motive and diffidence as to my own powers, that I venture to address you on the matter of the Criminal Procedure Amendment Bill, a matter more serious than any which has occupied the attention of Government since the terrible days of the Mutiny.

Many angry words have been uttered, and bitter things written, and you, my Lord, would be more than human did not all this stir in you feelings of hostility to the utterers; but I submit, my Lord, that the merits of a case are not always to be gauged by the address of the advocate, and I would urge you, in the name of fair play, which, as an Englishman, you ought to possess, to put aside all anger from your bosom, and to approach and consider the subject in a calm manner.

It is one that affects many in position and, as a consequence, in purse. Then be patient, my Lord, in hearing and bearing. When men's interests are touched they do not always use the language of moderation, and your Lordship should remember that Englishmen have ever been accustomed to speak out, and not, like the Oriental, express their meaning in honied words. It is, my Lord, the strong conviction and the knowledge that they have right on their side, that has enabled them to speak trumpet-tongued even on Cæsar's threshold; and Cæsar must listen.

For no fault or failing why are a loyal and devoted body to be deprived of their one privilege?

We are strangers amongst strangers, and our one ewe lamb is to be taken from us.

Deprive us, my Lord, of pay and place, these are in your gift, and only surrounded by such restrictions as equity places on you; but deprive us not of our most treasured privilege, and place not an Imperial race under the heel of an alien one—one that has never known freedom or liberty as we understand it. Remember that races physically cowardly are rarely morally brave. Moral courage is a most necessary qualification in rulers.

Do the men on whom you propose to confer such power as contemplated in this Bill show any sign of being different to their fellows in this respect?

Liberty is a tree of slow growth, and the blood of brave men was shed before it grew in England to its present magnificent proportions. Moral fibre is a produce of that tree: that tree a stranger to this soil.

You, my Lord, are a peer, and can claim to be tried by your peers. You are not even subject to be tried for your life and liberty by the ordinary men of your race, but you must be tried by your equals in rank. Then respect the privileges of those below you.

Now, my Lord, I humbly ask you to consider whether you would like this privilege to be taken from you. You would have even your countrymen trying you: how much less would you like a jury of foreigners sitting on the bench. My Lord, consider your own large privileges of being a representative in our country without any will or voice of the people. You have your rights as a peer. No one grudges you these rights, because God has not made all men equal. Why should you then try to equalise? It is against the natural order of things. Put yourself in our places, working here in a foreign land amidst aliens, in a climate which prematurely ages, even if life be given to work in; and ask yourself is it fair to surround us with more difficulties than we already contend with—this merely to remove an anomaly, and to confer further dignity on a particular few.

To injure the feelings of the many for the sake of the few is contrary to polity.

My Lord, do you consider that the universal voice of those affected by this Bill has been raised out of merely race prejudice and hate? No: this unanimous protest has been caused by the deep-seated conviction that fair play will not have full swing, that our liberty will be in danger, and that we shall be placed in a position which will be misunderstood.

It is not the lust for power that we are credited with by our opponents that has stirred up the community affected, nor the desire that because we are conquerors, that therefore the right of might should be enforced, and those subjected by arms should be ground down and never again be allowed to rise.

My Lord, be fair to your countrymen. It is said in Sacred Writ that there is safety in the counsel of the multitude. Listen to that counsel.

Credit your fellow-countrymen with not having lost all feelings of fair play because they are here; believe that there are some hearts honest in intention, and not unkindly in their feeling to our Native fellow-subjects, and remember that we who cry out are those who have had most experience of the people.

If our Native brethren are fit to wield the power of trying us, why should the army not be open to Native commissioned officers? Why should there not be Native volunteer corps? Why should the Arms Act be in force?

India is a land of anomalies, the races heterogeneous you rule, and your duty to keep peace between them. Is this measure calculated to promote this peace?

Our privilege is our anomaly: let us keep it, or sweep every anomaly away.

My Lord, other and abler pens than mine have written, and the great in state, law, and commerce have spoken; therefore it behoves me to say little in the way of argument; but ere concluding I would earnestly ask your Lordship to consider that have you ever read in the history of men of an universal cry like this going up that had not more than mere prejudice and pride at bottom as its cause?

My Lord, seek yet more deeply for that cause.

(Signed) W. R. FINCH.

No. 56.

LETTER from the UNDER SECRETARY TO GOVERNMENT, BOMBAY, to SECRETARY TO GOVERNMENT OF INDIA, LEGISLATIVE DEPARTMENT. (No. 3,429, dated 21st May, 1883.)

I AM directed to forward herewith a memorial from the Bombay Trades Association, to the address of His Excellency the Viceroy and Governor-General in Council, on the subject of the Bill to amend the Code of Criminal Procedure, 1812, so far as it relates to the exercise of jurisdiction over European British subjects.

I have, &c.,

(Signed) C. G. W. MACPHERSON.

MEMORIAL OF BOMBAY TRADES ASSOCIATION (dated 9th May 1883) to His Excellency the Most Hon. the MARQUIS OF RIPON, P.C., K.G., G.C.B., G.M.S.I., Viceroy and Governor General of India, referred to in preceding letter.

The Memorial of the Bombay Trades Association—

Respectfully sheweth,—That at a general meeting of the members of the Bombay Trades' Association, held on the 14th March 1883, to consider, among other business, the Criminal Procedure Code, 1882, Amendment Bill now before the Legislative Council of India, it was resolved that a memorial be addressed to your Excellency in support of that which had been resolved upon by the Bombay Chamber of Commerce, and praying that the said Bill might be withdrawn.

2. That the members of this Association concur with the views expressed in the memorial of the Chamber of Commerce addressed to your Excellency, and dated the 22nd March 1883, in which they pray that the proposed legislation may be abandoned as being premature and unnecessary.

3. Your memorialists submit that, in Mufassal districts, where all influence and Court surroundings are Native, Europeans are already at great disadvantage in seeking the protection of justice or access to the judicial authority, that they are thus deprived of much of the legal protection to which they are entitled, and that this state of things will be aggravated if the judicial officer is not an European.

4. That in the administration of justice in this country, many anomalies exist to the advantage of natives of India, which more than sufficiently countenance the so-called anomaly in favour of Europeans now proposed to be removed; that some of these are considered by legal authorities to be grievous hindrances to justice and have no parallel in European countries; and that the fact of their existing in civil procedure while the Bill now before your Excellency deals with criminal does not affect the argument. Natives might gauge the alarm produced among Europeans by the proposed Bill by contemplating the excitement which would attend a proposal to remove some of these anomalies.

5. Your memorialists submit that all civilised free communities become reconciled to anomalies which are the results of compromise, and that, in the conflicts of race, compromises are the only results which are final.

6. That your memorialists regard the proposed amendment with the greater alarm, because, by the rules framed under your Excellency's

predecessor, Native gentlemen are yearly appointed to the Civil Service without that guarantee of previous education and training which is exacted from English candidates in competitive examination.

7. That your memorialists notice with the greatest apprehension and surprise the proposal to disable the Supreme or Local Government from nominating European British subjects other than magistrates of the first class to be justices of the peace for the Mufassal; and they have been unable to discover any motive for this change either in the statement of objects and reasons attached to the Bill or any circumstances which have come to their knowledge.

8. Your memorialists earnestly hope that the Bill now before the Legislative Council of India may not be passed into law.

And your memorialists, as in duty bound, will ever pray.

On behalf of the memorialists,

(Signed)	D. S. KEMP,	} Bombay Trades Association.
	Chairman,	
	W. J. PEARSON,	
	Secretary,	

No. 57.

MEMORIAL of the NATIVE INHABITANTS OF BOMBAY to His Excellency the Most Hon. GEORGE FREDERICK SAMUEL, MARQUIS OF RIPON, K.G., P.C., G.C.B., Viceroy and Governor General of India.

The Humble Memorial of the Native Inhabitants of Bombay at a Public Meeting assembled.

RESPECTFULLY SHOWETH,

THAT your Memorialists observe with much satisfaction the Bill introduced into your Excellency's Legislative Council, on the 9th February last, for the purpose of amending certain grave defects existing in the Code of Criminal Procedure at present in force in this country. These defects had been for many years past the subject of very considerable complaints, which found formal and pointed expression in your Excellency's Legislative Council in March 1882, when the present Code was passed, and when an amendment having the same object as the present Bill was brought before the Council, and withdrawn only upon a promise given that the subject would receive early and more careful consideration than could be bestowed on it at that time.

2. Your memorialists beg at the very outset to disclaim any desire for the removal of any privileges enjoyed and really valued by any particular class of Her Majesty's subjects when those privileges are such as involve no injury to any other class. But your memorialists hold that the privilege continued to British-born subjects of Her Majesty under the present Code of Criminal Procedure is one which, besides being singular as the only class privilege recognised in the administration of the criminal law, does involve injury, and very serious injury, to other classes of Her Majesty's subjects in this country; and they further hold that the curtailment of that privilege as attempted in the Bill now under discussion is in its extent the slightest that could be looked upon as at all meeting the circumstances of the case.

3. The administrative inconveniences which have been occasioned by the maintenance of the privilege in question; the inconvenience, not to say injustice, which parties to and witnesses in criminal proceedings in which European British subjects are the accused persons, are put to in consequence of that privilege; the mark of inferiority which it implies on one gradually increasing class of officers in Her Majesty's service, and the occasional injustice which must be expected to occur in the distribution of the various administrative districts to those officers if the said privilege is maintained untouched; all these are considerations which, taken together, ought, your memorialists submit, to strongly weigh with the British Government in India, having regard to the policy of that Government as often authoritatively

declared, and nowhere in better or more forcible language than in the great Proclamation of 1858, in which Her Most Gracious Majesty used the following memorable words:—

“ We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil.” And again, “ It is our earnest desire . . . to administer its Government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And may the God of all power grant unto us and to those in authority under us strength to carry out these our wishes for the good of our people.”

4. Your memorialists gladly admit that the principles above referred to have, in a general way, and to some extent, practically guided the Government of our country, and the history of British Indian administration in the past exhibits a constant, if somewhat slow, progress of equalising the status before the law of all classes of Her Majesty's subjects. Your memorialists accordingly consider the Bill in question as only one short step in the direction in which British policy in this country has uniformly progressed. And they can therefore only deplore the spirit of partisanship which the Bill has roused in a section of Her Majesty's subjects. But they cannot help feeling that that spirit has not been roused by this Bill alone, and that behind that spirit lies a strong antagonism to the whole policy of the present Government of India—a policy which, your memorialists submit, is not only just and beneficent in itself, but is also in consonance with, and is the proper outcome of, principles which have been laid down for upwards of half a century by successive Parliaments, Secretaries of State for India, and the Governments of India, and, above all, calculated to promote the best interests of both England and India.

5. Your memorialists maintain that when the principle is once admitted that the natives of this country ought to be appointed in gradually increasing numbers to posts in the service of Her Majesty which in their ordinary functions include the trial of offences committed by European subjects, a very strong case is made out for such legislation as is attempted in this Bill. It is the duty of the statesman to provide in due season for an adaptation of the whole administrative machinery to that principle before an overwhelming number of cases actually arise in which such adaptation may be specifically required.

6. Your memorialists would crave leave to add a few words upon certain specific points made in connexion with this subject.

7. The existence of this anomalous and invidious distinction which the Bill seeks to remove is sought to be justified by the assumed incapacity of Native magistrates to deal with cases in which British-born subjects are concerned. The grounds alleged for this assumption are:—(1) that Native magistrates are likely to be swayed by race prejudices. (2) That they are not sufficiently acquainted with European manners and customs. (3) That much perjury prevails in India. (4) That false and trumped-up charges are often brought against innocent parties. (5) That the aid of experienced counsel cannot be had in the Mofussil.

8. First, as to race prejudices, it must be remembered that the magistrates who are to be entrusted with jurisdiction over Europeans will of necessity be tried and trusted servants of Government, who have gone through years of training, and who have by their qualifications attained high positions, such as those of district magistrates or session judges. The other persons who are eligible for those extended powers are those covenanted civil servants, assistant commissioners, or cantonment magistrates only who have been especially selected by Government to be justices of the peace.

9. Your memorialists would respectfully submit that it is impossible to suppose that any one of these magistrates—most of whom must necessarily have been educated in England, and have thus come into social contact with Europeans—could entertain any hostile prejudices against the English people. Surely the blessings of English rule—which no one knows better, which no one appreciates better, than the educated natives of India—are calculated to produce not a feeling of hostility, not a feeling of prejudice against the

English people, but rather a feeling of respect, gratitude, and admiration. The idea, therefore, of wilful injustice must, your memorialists submit, be dismissed as a gross and unjustifiable libel, unfair alike to the English Government in India and to the Native magistrates.

10. Wilful injustice being thus out of the question, is there any reasonable ground for supposing that Native magistrates are more likely to be unconsciously swayed by race prejudices than their European colleagues? In considering this question one must not forget the high training the magistrates in question must have received before they are entrusted with the powers proposed to be given under the Bill, nor the fact that Hindu magistrates try every day questions in which Hindus, Parsees, and Mussulmans may be opposed to each other and *vice versa*. Now it has never been alleged that Hindu, Mussulman, or Parsee magistrates unjustly convict persons belonging to a different race or creed from their own. Then why should it be supposed that these magistrates would be unjustly influenced by race prejudices in the case of Europeans only?

11. As to want of acquaintance with European manners and customs, your memorialists submit that this is not true in the case of Natives who have been educated in England, or even those who have received a high English education in this country, and who have for years mixed with Europeans in their own country and in India on a footing of equality and friendship. On the contrary, your memorialists would submit that covenanted Native civil servants are likely to be better acquainted with European manners and customs than many European magistrates are, and can generally be, with the habits and customs of the natives of this country.

12. In regard to perjury and false and trumped-up charges, and the absence of counsel, surely experienced Native magistrates are as well able to deal with these difficulties as their European colleagues, or rather more, from their intimate knowledge of Natives. These difficulties are not alleged to be confined to European cases only, but to occur in all cases. But if the magistrates are able to detect perjury and to discover trumped-up charges even in the absence of counsel, when levelled against the natives of this country, surely they would be equally able to detect them when they have to try cases in which Europeans are concerned.

13. And your memorialists submit that the multiplication of railways and the telegraph has made it easy for parties to engage counsel, or to communicate readily with the Government or the High Courts, which could not have been done in former times; while the High Courts in India have now been invested with ample powers to transfer cases on all occasions where such a step may seem desirable. If then these magistrates are admittedly competent to administer justice to the millions of India, it can hardly be seriously argued that they are unfit to deal with the few cases in which Europeans are concerned. Your memorialists cannot believe that Natives are more governed by race prejudices than Europeans. They think that quite the contrary is the fact.

14. Under these circumstances your memorialists would respectfully ask whether it is just, dignified, or politic to have one set of scales for administering justice to the natives of this country and quite another for Europeans? Whether our Courts are good enough for trying questions of life and death for the 200 millions of Her Majesty's Indian subjects, but not fit to try even the most trivial questions in regard to Englishmen; and whether the present exceptional and anomalous provisions of the law are not calculated to lead the natives of this country to believe that they are intended more to screen European offenders than to secure impartial justice?

15. Lastly, your memorialists emphatically deny the gross misrepresentation that the natives of this country care nothing for this Bill. They, on the contrary, assert that they are keenly and deeply interested in it. They have watched, and will continue to watch, its fate with the most intense anxiety. In the opinion of your memorialists, the principle involved in this Bill is of the most vital importance to their interest and welfare. The question really is, whether the Natives of this country, no matter what their qualifications, their attainments, their learning, their experience, and their services in the cause of their country may be, are always to be treated as an inferior race of men; whether that inferiority is constantly to be marked by

invidious and galling distinctions? And this question, as already indicated, has now to be considered as part of the still larger question: whether India is to be governed upon the righteous principles which were announced by Her Most Gracious Majesty and have guided your Excellency's enlightened policy, or upon those of the opponents of this Bill?

And your memorialists, as in duty bound, shall for ever pray.

Bombay, April 1883.

REPORT of the PROCEEDINGS of a PUBLIC MEETING of the NATIVE INHABITANTS of BOMBAY, held in the Town Hall on 28th April 1883.

In compliance with a requisition made by the leading Parsee, Hindoo, and Mussulman residents in Bombay, a public meeting was convened by the Sheriff, Mr. Raghunath N. Khote, C.I.E., in the Town Hall, on Saturday (28th April 1883), for the purpose of considering the Bill for amending the "Code of Criminal Procedure now before the Legislative Council of His Excellency the Viceroy or Governor General of India."

The following are the names of the requisitionists, who represent the various Native communities of this city:—

Jamsetjee Jejeebhoy.	Framjee Dinshawjee Petit.
Munguldas Nathubhoy.	Dadabhai Naorojee.
Byramjee Jeejeebhoy.	K. R. Cama.
Dinshaw Manockjee Petit.	Narayan Ganesh Chandaracark.
Budrudin Tyabjee.	Nagindas Tulsidas.
Vurjeewandas Madhowdas.	Ghanasham Nilkunth.
Framjee Nosserwanjee.	Muncherjee Nowrojee Banajee.
Cursetjee Nosserwanjee Cama.	N. Byramjee Jeejeebhoy.
Jamsetjee Cursetjee Jamsetjee.	Peroshaw Merwanjee Jeejeebhoy.
Nosserwanjee Manockjee Petit.	Dhunjeebhoy Merwanjee Jeejeebhoy.
Mahomed Ali Rogay.	Pandoorung Dinnanathjee.
Mooljee Jaitha.	Darashah Dorabjee Reporter.
Sorabjee Framjee.	Muncherjee Framjee Cama.
Jamsetjee Nosserwanjee Petit.	Nanabhai R. Chichgar.
Nowrojee Furdonjee.	Vundravun Purshotumdas.
V. N. Mandlik.	Sakharam Arjun.
Pherozechah M. Mehta.	Shantaram Vithul.
Ahmedbhoy Hubibbhoy.	Nanabhai R. Ranina.
Treebhovundas Vurjeevundas.	Tribhowandas Munguldas.
Hurkisonadas Nurrotumdas.	Heerjee Ardaseer Dady.
Thakarsey Muljee.	Sorabjee S. Bengalee.
Kashinath Trimbak Telang.	Bomonjee Muncherjee Punthakey.
Kaikhosro N. Kabrajee.	Laxmidas Khimjee.
Byramjee Nosserwanjee Shirvai.	Maneckjee Burjorjee.
Shamarao Vithal.	Cursetjee Furdoonjee.
Shivashankar Govindram.	Thakurdas Atmaram Mehta.
Shantaram Narayan.	Vijbhucandas Atmaram Mehta.
Cowasjee Hormusjee, G.G.M.C.	K. M. Shroff.
Jamsetjee N. Tata.	Ardeshir B. Patell.
Manekshah Jahangirshah.	Dinanath Raghunath Khote.
Pandurang Balibhadre.	Pestonjee Eduljee Mehta.
Gokuldas K. Parekh.	Gokuldas Jagmohandas.
Shivram V. Bhandarkar.	Ardaseer Framjee Moos.

The Town Hall was crowded to overflowing. There was not a foot of standing room to be had anywhere, and the Hall was almost literally packed from floor to ceiling, and many who were unable to find seats perched themselves on the backs of the chairs and on the cover of the key-board of the organ. The appearance of the leading men of the various communities was the signal for great cheering.

The attendance included the following:—Mr. Raghunath Narayan Khote, who was present to open the meeting in his official capacity as Sheriff of Bombay; the Hon. Sir Jamsetjee Jejeebhoy, Bart., the Hon. Rao Sahab V. N. Mandlik, the Hon. Budroodin Tyabjee, Messrs. Vurjeevundas, Madhowdas, Nusserwanjee Manockjee Petit, Lakhmidas Khimjee, Jairajbhoy, Peerbhoy, Dadabhai Naorojee, N. Byramjee Jeejeebhoy, Mahomed Ali Rogay,

C. N. Kama, Kurrembhoy Ebrahim, Cursetjee Furdoonjee, Pherozechah M. Mehta, M. N. Banajee, B. M. Wagle, K. T. Telang, Homejee Cursetjee Dady, Cumroodin Tyebjee, Framjee Dinshaw Petit, Ahmedbhoy Hubibbhoy, K. N. Kabrajee, Bhaishunker Nanabhai, J. N. Tata, B. M. Punthakey, Bomanjee Pherozechah, Hormusjee Nusserwanjee Vakil, N. R. Ranina, K. C. Bedarkar, Jamsetjee C. Jamsetjee, P. N. Wadia, Byramjee N. Servai, Hurkisonadas Nurrotumdas, Shantaram Narayen, Nana Morojee, Dr. Sucearam Arjun, Dr. Kavasjee Hormusjee, Messrs. Tribhovundas Munguldas, N. K. Motabhoy, D. D. Davur, Muljee Thakersey, K. R. Kama, Muncherjee C. Murzban, Fazulbhoy Disram, Dinanath R. Khote, Vundravandas Purshotumdas, Dr. Shantaram Vithul, Dinshaw P. Kanga, Dhunjeebhoy Framjee, Dajee Abajee Khare, Dhunjeebhoy M. Jeejeebhoy, Dr. Ardeshir P. Kama, Messrs. Anundrao N. Vassudeo, Gokuldas Jugmohundas, Rehmoobhoy Hubibbhoy, Mirza Cousar, Gulam Mahomed Munshi, Thakoredas Atmaram, Amirudin Tyabjee, Vizbhukan Atmaram, Dinshaw Eduljee, Vacha, Sunderrao Raghunath, Maneckshaw Jehangirshaw, Dr. Framjee Shapurjee, &c. On the platform were deputations of Native gentlemen from the following places:—Ahmedabad, Broach, Poona, Sholapore, Surat, and Veerungaum. The meeting was also attended by a deputation from the Anjuman-i-Islam of Bombay. With the exception of three or four Europeans the audience was entirely composed of Natives.

Mr. Raghunath Narayen Khote, C.I.E., Sheriff of Bombay, in opening the meeting, said:—Sir Jamsetjee Jeejeebhoy and gentlemen,—A requisition has been addressed to me by a most representative and influential number of gentlemen of all classes of the Native community of Bombay. The requisition is to the following effect:—“We have the honour to request you to be good enough to convene at an early date a public meeting of the Native inhabitants of Bombay, to take place at the Town Hall, for the purpose of considering the Bill for amending the Code of Criminal Procedure now before the Legislative Council of His Excellency the Viceroy, the Governor-General of India.—We have the honour to be, Sir, your most obedient servants, Jamsetjee Jeejeebhoy, Munguldas Nathubhoy, and others.” “In compliance with the above request I hereby convene a public meeting of the Native inhabitants to be held at the Town Hall, on Saturday, at 4 p.m.” Gentlemen my concern at the present moment is merely to open the meeting by declaring that it is duly convened. I need simply ask you to elect your own Chairman, and to proceed to transact the business which has brought you together; but in doing so it is impossible for me to play altogether a mechanical part. (Hear, hear.) It is impossible for me not to feel a sympathy with the motive of this meeting, nor is it possible for me to omit to give expression to that sympathy. It has been said that Mr. Ilbert's Bill affects only the Europeans in India, and that Natives have no concern with it whatever. Can sophistry go further than this? (Applause.) It is true that whilst the European population of the country are opposing the abrogation of what they naturally feel is their legitimate privilege, Natives on the other hand cannot sit silently and allow a measure to be shelved which promises to remove a disability that has hitherto rested on them by reason of their nationality. (Cheers.) If the Natives remain quiescent, their inaction is liable to be misunderstood. They will be set down as extremely apathetic and indifferent, and unfitted by reason of this very silence of theirs for the removal of the disability that has attached to them. (Hear, hear.) The Government of India and the provincial Governments and Administrations see the gross injustice and the practical inconvenience daily caused in the administration of the high charge which is entrusted them; and they are striving hard to remedy the evil. If we remain apathetic and silent, it might greatly weaken the hands of the Government, for advantage might be taken in England of our silence and apparent neglect; and the measure which we all hail with so much joy might be declared by the British Parliament as uncalled for. (Hear, hear.) It has been in the anxious contemplation of some people whether a medium course (and this is a fit case for a compromise) is not possible, such as might meet the convenience of the administration of criminal justice by the State; a course which, whilst it answered on the other hand the objections raised by the European population would remove the disability of which the Natives could justly complain.

(Hear, hear.) Such a happy compromise would prevent the heart-burning between the two races, which is calculated to be daily increased if the present measure passed into law; for whenever any case involving race prejudices arose, the sore would open and keep festering. (Hear, hear.) I have reason to believe that some such compromise is already under the consideration of Government, and I devoutly hope that whatever course is ultimately determined upon, it will be such as will not only disarm to a great extent, if not altogether, the opposition now offered against Mr. Ilbert's bill, but also remove the disability which attaches to our countrymen under the present law. (Applause.) Gentlemen, we may be quite sure that in a matter of such grave and national importance as this, the Government here and the Parliament in England cannot but be imbued with an anxious and sincere desire to do full justice to all parties concerned. Their one grand aim must be the greatest good of the greatest number; and while holding the scales of justice evenly towards all, they must so shape their course that no animosity of the races under their sway should be excited by anything they enact, or that the weak be overridden by the powerful while they look passively on. (Applause.) It is quite unknown, nor can I imagine, what final conclusions Government will arrive at regarding this matter; but of one thing we can be certain, and that is that they will devote to the subject the gravest and the most patient deliberation which it is possible for them to bestow upon it. (Applause.) Before I conclude, gentlemen, I earnestly trust that your proceedings will be characterised by such a dignified and dispassionate bearing as the gravity of the subject before you so imperatively demands. Let us be worthy of ourselves. (Cheers.) And now, gentlemen, I will leave the chair and request you to elect your own Chairman and proceed to the business of the evening. (Applause.)

Mr. Nosserwanjee M. Petit then proposed that Sir Jamsetjee Jeejeebhoy, Bart., should be requested to take the chair.

Mr. Vurjeevandas Madhowdas seconded the proposition, which was agreed to.

Sir Jamsetjee Jeejeebhoy then took the chair amidst much cheering. He said:—Gentlemen,—I confess to a sense of embarrassment at being called upon to preside at this large and distinguished gathering, and could have wished that the task of addressing such a meeting as Chairman, on such a subject as has called us here to-day, had devolved upon some abler speaker. Nor is it conventional modesty that prompts this expression of my wish, for I see around me representatives of all sections of the Native community—Hindoos, Mahomedans, and Parsees—gentlemen occupying a prominent position in their respective spheres of life, and well known for their ability, independence, and public spirit. (Cheers.) That the occasion is one which justifies such a large and influential gathering will be easily understood. (Hear, hear.) You are aware, gentlemen, that we have met to-day to support an attempt at remedying an anomaly in the administration of the criminal law of the country—(applause)—an anomaly the removal of which the altered social and political conditions of India call for. (Renewed applause.) If this alone were our object, it will need all your endeavours to strenuously support it, as being a legislative measure intended and calculated to remove an unnecessary and invidious distinction between European and Native judicial officers, founded not, as we believe, on the question of personal fitness, but only on differences of race. (Cheers.) But our special object is to support an important principle involved in such legislation—to vindicate the wise, noble, and benevolent policy of the present Government of India from the unreasoning alarms of short-sighted statesmanship (applause), and to beseech the House of Commons and the Supreme Government to once more emphasise and carry out the solemn pledges and assurances given to the country by successive Parliaments and Secretaries of State for India and Indian Governments. (Cheers.) This is an object which may well call for all your energy and earnestness. I need not tell you that such a policy, conceived in such a spirit of enlightened liberality, if faithfully and consistently carried out, would in the end be found to be the best preservation of the friendly relations between Europeans and Natives both in political and social regards. (Hear, hear, and applause.) So much has already been said for and against the Bill and the principles

involved in it, and the results which the carrying out of such principles would have on the administration of the country, that I will not take up your time here by going over the same ground. I will only exhort you to discuss the main object here with all the temper and coolness you can command, without going into irrelevant matters or raising side issues. (Hear, hear.) We in Bombay have, during the different stages of the controversy which the recklessness of some excitable persons on the other side of India has done so much to embitter, pursued a most dignified and honourable course, and discussed the burning question like sober, practical men of business, without being carried away by prejudice or feeling. (Hear, hear.) I have such confidence in the good sense and moderation of this meeting which I have the privilege now to address, that I believe no unpleasantness will mar the proceedings of to-day. (Hear, hear.) I will only add that the present is the most opportune time for the natives of the country to approach the House of Commons on the subject, and assist it to decide the very important issues raised, with temperate and carefully reasoned memorials. These will show that the natives of India, so far from being indifferent to the proposed Bill and the broad principle underlying it, watch the policy to which that Bill owes its origin, with the keenest interest. (Applause.) We regard it as a step in the right direction which the present conditions of the country loudly call for, and as a mere instalment of those liberal concessions which, we all confidently expect, will be made to us hereafter. (Hear, hear.) Let us confidently rely on the noble traditions and instincts of the justness and liberality of the House of Commons, whose verdict we will calmly await without any misgiving, as we feel sure that it will be swayed not by ignorance or prejudice, but by the most thoughtful, just, prudent, and liberal counsels. (Applause.) Before I sit down I may inform the meeting that deputations have arrived from Poona, Sholapore, Ahmedabad, Surat, Broach, and Veeramgaum, and there is also a deputation from the Anjuman-i-Islam. A letter has been received from Sir Mungaldas Nathoobhoy, expressing his regret at being unable to attend the meeting, and another from Mr. Byramjee Jeejeebhoy, C.S.I., who has been prevented by sickness from being present on the occasion; also a letter from Mr. Framjee Nosserwanjee Patel, expressing regret for not being able to attend, was received. With these remarks I call upon the Hon. Budroodeen Tyabjee to move the first resolution. (Applause.)

The Hon. Budroodeen Tyabjee, who was received with loud cheers, said:—Mr. Chairman and gentlemen,—I think I have been present at a great many public meetings on various important occasions, some of them held in this very Town Hall, but I do not remember to have ever witnessed a larger, a more influential, or a more representative gathering than I see before me this evening. (Cheers.) Gentlemen, the occasion which has brought us together is indeed an important one. We have met together for the purpose of discussing calmly and dispassionately,—and I trust without loss of dignity to ourselves or injustice to others—the proposed amendments to the Code of Criminal Procedure. Gentlemen, whatever may be the feelings excited elsewhere—whatever may be the causes which have given rise to those feelings—whatever may be responsible for them, I think we, the citizens of Bombay, have indeed good reason to congratulate ourselves upon the comparatively serene atmosphere in which we have the good fortune to live. (Hear, hear.) Gentlemen, I am one of those who think that strong, passionate, or abusive language is the surest sign of a bad cause. (Applause.) And so convinced am I of the truth of this saying that I should indeed be sorry if a single word, expression, or sentiment dropped this evening either from my own lips or from those of any other speaker that could be justly held to give cause of offence to any section of Her Majesty's subjects, and especially to that important European community with whom it should be our constant aim to live in peace and harmony, and, if possible, on terms of friendship, and to whom, in spite of recent occurrences, we must always look up with more or less of respect, esteem, and even admiration. (Loud cheers.) But, gentlemen, if I thus counsel moderation it is certainly not because I don't feel indignant at the unparalleled insults that have been offered to our whole Indian community at a great public meeting recently held in the metropolis. (Applause.) But because I am anxious that our countrymen

should afford a striking, a memorable, example of forbearance and self-restraint, even under the most trying circumstances, and because I am convinced that no language that we could use could add one jot to the severity of the condemnation which has already been pronounced upon the Calcutta proceedings by no less a personage than Her Majesty's representative in India, in no less a place than the Supreme Legislative Council, when His Excellency the Viceroy—(loud cheers)—denounced the language of the Calcutta orators as the language of "violence, of exaggeration, of misrepresentation and menace." (Loud applause.) Now, gentlemen, what are the proposals of the Government of India that have given rise to all this heated discussion, to all this violent agitation? They are simply to invest a very small and select number out of the ablest, the most experienced, and the most distinguished of our Native magistrates and judges with an infinitesimal jurisdiction over European British subjects! (Applause.) Gentlemen, the proposals are in themselves so small, and but for the principle involved so utterly insignificant, that it would indeed have required the power of prophecy to have foretold the storm that has burst over Calcutta and overwhelmed the European community there in a whirlwind of passion, prejudice, excitement, and even frenzy. But, gentlemen, however much we may regret this ebullition of feeling, however much we may consider it unjustifiable, it yet behoves us, I think, in a case of this kind, where the interests of privileges, real or imaginary, of the European community are concerned, to inquire carefully into their allegations, and to see if there is really any foundation for the alarm which they profess to feel. Now, gentlemen, what are the grounds on which this violent opposition to the Bill is sought to be justified? First, it is alleged that the Native magistrates and judges are likely to be swayed by their race prejudices in the decision of cases against Europeans. But, gentlemen, is it true, in the first place, that we natives of India have any such prejudices? Is it true that we entertain any hostile feelings towards the European community? Gentlemen, I beg to give that statement the most emphatic contradiction. I have known Englishmen who entertain the strongest prejudices against the natives of India, who look upon them as an inferior order of beings,—(ironical cheers),—who refuse to associate with them on anything like terms of equality, but I have not come across a single native of India who entertains similar feelings towards the European community. (Loud cheers.) But, gentlemen, even assuming for a moment the existence of these race prejudices, what reason is there for supposing that our Native judges and magistrates are more likely to be swayed by them than their European colleagues? Do not Hindu, Mussulman, and Parsee judges and magistrates every day dispose of cases in which the parties appearing before them belong to races, creeds, and nationalities entirely different from their own? (Hear, hear.) Then what ground is there for believing that these judges and magistrates, who hold the scales of justice with perfect impartiality in the case of all other communities, should lose their balance of mind in the case of Europeans only? Gentlemen, I am convinced that this difficulty about the race prejudices, so far as we are concerned, has no existence in the imagination of the opponents of this Bill—and I am inclined to think that in advancing this argument they have unconsciously let the cat out of the bag, they have in fact been judging by their own standards. (Hear, hear, and applause.) But, gentlemen, it is further alleged that a great deal of perjury prevails in India, that false charges are often brought against innocent parties, and that the absence of counsel and of public criticism would make it impossible for the Native judges and magistrates to dispense impartial justice to Europeans. But surely, gentlemen, these difficulties have been vastly exaggerated. India cannot boast the monopoly of perjury. The famous claimant Tichborne was not a native of India. (Loud applause.) But so far as these difficulties do really exist, they exist in all cases. (Hear, hear.) They are more or less inherent in the administration of justice. They are not peculiar to cases where Europeans only are concerned. They are not confined to Native magistrates only. A European magistrate has to contend with these difficulties no less than his Native colleagues. He cannot get rid of them by the mere superiority of his race. The only means which will enable him to cope with them are not the place of his birth or the colour of his skin, but

precisely those qualifications which will be found in the Native magistrates and judges to whom this Bill will apply, viz., great natural abilities, high legal attainments, and a ripe judicial experience. (Hear, hear.) But, gentlemen, if our Native magistrates and judges possess enough of these qualifications to overcome these difficulties in the thousands of cases that come before them where other communities are concerned, why are we to assume that they would fail to do so only when Europeans are brought before them? (Hear, hear.) Surely, gentlemen, it is but reasonable to suppose that our Native magistrates and judges, considering the peculiar position of the European community in India, would use more care and caution in dealing with Englishmen than even with their own countrymen. But, gentlemen, it is further alleged that our Native magistrates and judges are not sufficiently acquainted with the habits and customs of the European community, especially the lower orders. If this is a sound argument, every European judge in India ought to be at once deprived of his jurisdiction over the natives of this country! For what can be clearer than that even the highest of our judicial officers, even the judges of the High Court, know but little of the masses of the Native community? (Hear, hear.) If our native covenanted civil servants who have spent years in England, who freely mix with the best classes of the European community in India, are incompetent to try European offenders by reason of their imperfect knowledge of the habits of accused, it follows that European judges fresh from England and knowing not a word of the Indian languages must be still more unfit to try the natives of this country. (Applause.) This is surely a *reductio ad absurdum*. The truth, gentlemen, is that, although a special knowledge of ways of the accused is not without its use, what is really essential in the administration of criminal justice is, a sound knowledge of the law and a thorough acquaintance with the world, combined with ability to appreciate evidence. It seems to me therefore, gentlemen, that unless the Government is prepared to admit that the whole administration of justice in India is utterly rotten to the core, that our magistrates and judges, both European and Natives, ordinarily dispense, not justice but injustice, or, in the alternative, that the present exceptional and anomalous machinery of the law is provided and kept up, not so much for securing impartial justice, as for screening European offenders,—unless one or the other of these preposterous conclusions is admitted, it will be impossible for His Excellency the Viceroy to attach the smallest weight to arguments founded purely on these considerations. (Applause.) But, gentlemen, it is further argued that it is a highly cherished privilege of the European community, and that it ought not to be taken away, because it causes no injustice to the natives of this country. But, gentlemen, what can be greater injustice than to compel an unhappy complainant who may have a grievance against an Englishman to undertake a long and tedious journey, at great cost and inconvenience to himself and his witnesses, in search of a European magistrate, because forsooth the Native magistrate near at hand is incompetent to dispose of the charge by reason of his race. Further, gentlemen, what can be greater injustice to the whole Indian community than to declare even the ablest of our Native magistrates and judges, no matter what their qualifications may be, as an inferior order of men, incapable of rising to that height of judicial excellence which is supposed to be necessary to try cases against Europeans? Gentlemen, I venture to think that the present state of the law is not only unjust but it is insulting to us. (Cheers.) It is insulting to us, first, because it brands even the ablest, the highest, and the most distinguished of our judicial officers with a galling and a perpetual mark of inferiority. (Renewed cheers.) It is insulting to us because it draws an invidious distinction between the European and the Native members of the same covenanted civil service. It is insulting to us because it exalts the European British subjects into such superior beings as to declare that even the highest of our judicial officers shall be incapable of imprisoning him a single day or fining him a single rupee; and it is insulting to us because it degrades our own countrymen to such a depth as to declare in the very next breath that the same incompetent and unfit magistrates and judges, who are incapable of trying even the most trivial case of assault against an Englishman, are yet fit and competent to try millions of our own countrymen for the gravest

charges, and even to condemn them to death! (Loud and prolonged cheers.) Gentlemen, the height of absurdity could go no further, and yet forsooth these are the arguments ostensibly put forward for the purpose of defeating this just, generous, and, above all, extremely moderate and cautious measure. But, gentlemen, I believe that the real opposition to this Bill is founded, not upon any sincere apprehensions as to miscarriage of justice, not upon any belief in these flimsy arguments the hollowness of which I have had no difficulty in exposing, and which are not likely to deceive any candid politician, much less the sagacious statesman into whose hands the destinies of this great Empire have been committed, but upon a dislike, more or less conscious, more or less intense, of the whole of Lord Ripon's administration. (Hear, and applause.) Gentlemen, there is a large section of the Anglo-Indian community which cannot fully reconcile itself to that fundamental principle which has been so often declared and repeated over and over again by successive Viceroys, Ministers, Secrétaries of State, Parliaments, and even by Her Gracious Majesty herself; that principle the recognition of which forms the key-note to the whole of Lord Ripon's policy, that principle on which are based all our political rights, just hopes, and legitimate aspirations; that principle, namely, which declares that the natives of India are entitled to a just share in the administration of their own country, and that no mere difference in race, colour, or creed shall be just ground for distinction in political treatment. (Cheers.) Gentlemen, there is no principle better grounded in moral justice or political wisdom. Other Viceroys there have been who have accepted and recognised this principle in words, but Lord Ripon—(cheers)—is the only one who has had the courage, the sagacity, the generosity, the prudence, and the firmness to give effect to it in deeds. (Applause.) Gentlemen, they must indeed be short-sighted politicians who cannot see the justice and wisdom and the perfect safety of this principle. Lord Ripon's policy, founded on a just and generous treatment of the natives of this country, so far from losing England's hold upon India, will rivet it and chain the affection of the people to the throne. (Cheers.) Gentlemen, I have great faith in the justice and the firmness of the Government of India, but I have still greater faith in the noble instincts and the love of fair play which characterise the British Parliament and the British public; but, gentlemen, if the introduction of this Bill was in the first instance wise and politic, as I think it undoubtedly was, the passing of it now has become a matter of absolute political necessity. (Applause.) The withdrawal of the Bill under the present circumstances could be looked upon as nothing less than the surrender of right and reason to passion and prejudice—as the triumph of turbulent agitation, however wrong, over calm and respectful representations, however just and well-founded. (Applause.) Gentlemen, the moral effect of such a proceeding upon our vast and varied populations cannot fail to be disastrous in the last degree; but if, on the other hand, this Bill, even with the modification mentioned by my friend the Sheriff, becomes law now—when it may yet be accepted as a simple act of justice no less voluntary than graceful, and not merely as a concession, as 10 years hence, extorted by irresistible popular agitation, it will—it will be so far from shifting themes; if, on the other hand, the bill becomes law now, as I hope and trust it will, when it may yet be accepted as an act of justice no less voluntary than graceful, and not merely as a concession, as 10 years hence, extorted by irresistible popular agitation, it will, so far from shifting or weakening the foundations of the British Empire in India, consolidate and strengthen them.* (Cheers.) Let Lord Ripon's generous and enlightened policy be continued, and India, instead of remaining as at present a source of weakness to England, will become a tower of strength; the British power, instead of resting upon the bayonets of the soldiers or the craven fears of a conquered and abject population, will rest upon the far more honourable,—and the only, and I venture to think, true,—firm, and endearing foundation, viz., the affections and the gratitude of a happy, prosperous, and contented people. (Loud applause.) I beg to move "That, " in the opinion of this meeting, the Bill to amend the Code of Criminal " Procedure is necessary for the just and impartial administration of justice, " and is in consonance with the righteous policy which the British Govern- " ment has followed in the administration of this country." (Applause.)

* Sic in report received from India.

Mr. Pherozechah M. Mehta, who was received with loud and prolonged cheers, said :—Mr. Chairman and gentlemen,—In rising to second the resolution which has been just moved by my hon. friend Mr. B. Tyabjee in a speech which you will agree with me in admiring as equally remarkable for its ability and eloquence as for the studied and dignified moderation of its tone—(cheers)—I confess that I undertake the task which has been assigned to me with some degree of trepidation. Within the last few days we have been generously inundated with advice to preserve the utmost judicial calmness and moderation, without the slightest admixture of even judicial severity, not to allow an angry word or syllable to escape us, while we are also to put forth our case with force and vigour. Now, gentlemen, this advice is more easy to preach than to practise, and though I have resolved to use my best endeavours to achieve this golden mean, I cannot quite escape a feeling of some nervousness as to the success of this rather difficult experiment. (Laughter.) But, gentlemen, I have one consolation that, in whatever I may say, I will be guided by two sentiments of which I am firmly and sincerely conscious, and which will never permit me to say anything which will be needlessly offensive or malicious. (Hear, hear.) If I entertain one political conviction more strongly than another, it is that this country, in falling under British rule, has fallen into the hands of a nation than which no other is better qualified to govern her wisely and well. Look among all the leading nations of the world, and you will not find one who, both by her faults and by her virtues, is so well adapted to steer her safe on the path of true progress and prosperity. (Cheers.) It is true that the English are a stubborn piece of humanity, who might well be asked sometimes to take to heart the exhortation addressed once to the chosen people of God, “Circumcise, therefore, the foreskin of your heart, and be no more stiff-necked;” but it must be acknowledged, at the same time, that it is perhaps this very trait which has preserved this country from rash and extreme experiments, and has put it on a path of sure, though slow, development. (Cheers.) Secondly, in setting up as a critic of Englishmen in India, I fully recognise that I do not set up any claim of superiority—I do not set up as a superior person who could have done better under similar circumstances; on the contrary, gentlemen, I believe most of the Natives who have devoted any thought to this subject are ready to recognise that if they were placed in the position of the dominant race, God knows how they might have strutted before high Heaven, and performed antics which might make angels weep. (Hear, hear.) At the same time, gentlemen, I feel confident that Englishmen will frankly admit that this circumstance gives them no immunity from criticism, nor gives them any right to be impatient if they are judged by the principles they themselves have introduced and taught as the principles on which their work in this country must be finally judged. (Cheers.) The nervousness which I have admitted is therefore allayed by the consciousness that, even if I err, I will not set down aught in malice. My fear and trembling, however, are not quite at an end, and that is in consequence of the attitude which our European friends have taken up in regard to the public expression of Native opinion on this Jurisdiction Bill, which we are met here to consider to-day. That attitude is not unlike that of the amiable Scotchman described by Charles Lamb, who pitched into you for your presumption if you ventured to go in for praise of his great national poet, and performed the same operation on you for your ignorance if you dared to find fault with him. (Laughter.) Much in the same humour, our European friends are disposed to rebuke us for our obstreperousness if we make bold to express our opinion of this Bill in public meeting assembled, and are just as ready to take advantage of us on the score of our indifference if we sit quiet without blowing the feeblest counterblast to the incessant sounding of trumpets and clashing of cymbals, which is kept up even until now all over the country, to fright away this poor little Bill. (Laughter and applause.) This attitude may lay claim, I admit, to some amount of rather grim humour, but I trust our European friends will not be very hard upon us if we refuse to be tossed about in this manner on the two horns of such a dilemma as they present to us, and prudently hold fast by the one which does us least injury. But as soon as we decide, gentlemen, after anxious consideration, to hold a public meeting, another mine is sprung upon us. We are told that we have no concern with this Bill at all—(laughter);

—that it is only a little matter between Lord Ripon and the Europeans in India, in which the parties have got rather hot with each other; that, in fact, we have no locus standi at all to take part in the argument. Now, gentlemen, of all the cool and astonishing things which have been said in the controversy on this Bill (and they are not few) it seems to me that this is about the most cool and astonishing. (Applause.) For nothing can be clearer than that the Natives have the most immediate and vital concern in the subject-matter of this Bill. I do not refer here to the handful of Native civilians who might get extended jurisdiction under it, I do not speak here of the educated English-speaking Natives, who might be supposed to sympathise with Native civilians, but I speak of the masses of the Native population, and I say that they are as directly and strongly interested in this Bill as any European British-born subject. (Hear, hear.) As sure as there are two parties to an offence,—the offending party and the suffering party,—both, the one as well as the other, are interested in the trial in which they are respectively to appear as complainant and accused. Either may suffer by a miscarriage of justice. As courts of criminal law are constituted in the Mofussil, the interest of the Natives is still more close and vital. If a European commits an offence against a Native, the latter has seriously to consider whether it would be worth his while to bring the offender to justice, remembering that he and his witnesses may have to bear no inconsiderable loss of time and trouble and expense in hunting after a qualified magistrate. (Applause.) Has it ever been inquired into in the course of this controversy how many offences committed by Europeans have never been brought to the cognisance of courts of justice in consequence of the difficulties thus created by this dear and cherished privilege of being tried by their peers? (Hear, hear.) I can tell you, gentlemen, that the popular impression in the Mofussil about this valuable privilege is that it is simply an immunity practically enjoyed by Europeans from the consequences of a large class of offences committed by them against Natives. (Applause.) Only the other day I happened to be at Surat, and had a conversation about this Bill, not with educated Natives, but with true unsophisticated children of the soil from the other side of the Tapti. I will relate to you, gentlemen, the conversation I had with these Natives, utterly unspoilt by a knowledge of English, particularly as it is advanced by the opponents of the Bill that the agitation in favour of it is created only by the educated Natives, in which the masses take no interest whatsoever. They, the people I speak of, asked me if we in Bombay were not going to stir in the matter and support the Bill, as they said that the privilege at present enjoyed by Europeans meant simply in a large number of cases immunity from prosecution altogether, as the trouble and expense of a trial before a competent magistrate were very great, and further as they had a very poor chance in the case of ordinary offences before a European magistrate, when the offender was a European. And they gave me an instance within their own knowledge of a European (a man not highly placed, be it fairly admitted) who went about bragging in their part of the country that he could ill-treat Natives as he liked, as no Native magistrate could try him, and no European magistrate would believe any d——d lot of Native witnesses. (Laughter and applause.) The word “d——d” is a free translation of my own of the vernacular word used in the conversation. Gentlemen, I do not offer this European as a representative European, or this story either as a representative story. It is, unfortunately, too much the fashion, both with Natives and Europeans, to moralise on isolated instances as if they were always typical ones. But I think this story very forcibly illustrates both the interest which the Natives have in the subject-matter of this Bill, and the interest which they take in the controversy and agitation about it. (Applause.) A locus standi, gentlemen, we most assuredly have in this controversy; if European British subjects hold that of the accused, we have the locus standi of the complainants. Now, gentlemen, I don’t propose to take up your time by entering into a discussion of the merits of this Bill, after the able and exhaustive treatment of it by Mr. Tyabjee. But all his arguments rest upon one assumption, his inferences follow logically and irresistibly if there is no question about this assumption. Mr. Tyabjee was perfectly justified in arguing upon the basis of this assumption; for it is founded upon the declared policy of the Crown with

regard to the government of this country. But in the progress of this controversy the opponents of the Bill have perceived that their arguments cannot be maintained till they attacked the wisdom of this policy. So now they deliberately urge that this Bill is in itself a matter of little moment, but their fears are aroused, as it indicates the shifting of the foundations of British power in India. Denouncing the wisdom of the declared policy of the Crown, or urging that its declarations in that respect were not meant to be practically acted upon, they boldly say that India has been conquered by force and must be governed by force. In preaching this gospel of might with regard to the government of this country, they have found a devoted supporter in England in Sir Fitzjames Stephen, and a somewhat doubtful one in Lord Salisbury.* They ridicule the policy of righteousness as one of weak sentiment, and seem almost to adopt, with scarcely disguised approval, the vigorous summary of their position given recently by Mr. Bright—(loud cheers)—in his own peculiarly happy manner, that, having won India by breaking all the Ten Commandments, it is too late now to think of maintaining it on the principles of the Sermon on the Mount. (Laughter and applause). Our European friends will pardon me if I say that a good many of them have a sneaking, when they have not a pronounced, partiality for this proposition, while they consider that the platitudes about England's duty to India, and the other quotations from Lord Macaulay and others about a "policy of national wisdom, national prosperity, and national honour," have no business to intrude in practical politics, but are only good enough to be spouted by Native orators on public occasions. (Hear, hear.) For many years the policy of governing India on principles of justice and equality for all the Queen's subjects, of whatever caste and creed, has never been so openly and so furiously called into question as now. It therefore seems to me, gentlemen, that this is a time when, without overstepping the limits of our loyalty or our gratitude, we may properly and justifiably examine the propositions which have been thus advanced, and try to show that the declared policy of the Crown was adopted after long and careful consideration—not on grounds of weak sentiment; that it was adopted not simply because it was a policy dictated by honour and justice (which we cheerfully and gratefully acknowledge that it is), but also because it was a policy dictated by the true interest of England herself, because in no other way could England hope to preserve her great dependency with the greatest amount of safety and profit to herself. (Cheers.) In the first place, gentlemen, it is said that India was won by the sword. Now I say that Englishmen don't do justice to themselves when they read Indian history in this way. Though it cannot be denied that there are many pages in this history blotted by error and crime, England has won India not simply by the sword, but in a large measure by the exercise of high moral and intellectual qualities, which have not only guided its victories, but have always been on the alert to neutralise its baneful influences. (Cheers). But, gentlemen, however India was won, can it be maintained with safety and profit by the sword only? This is too large a question to be treated fully in a public meeting like this, but I will lay before you three considerations which, I think, show that is impossible. First, India maintained by England by the power of her armies would be a heavy burden on her in case of her being involved in European complications. It is utterly improbable that England can always escape being dragged into the contests, rivalries, and ambitions of the other European powers. What with France with her desire to extend her colonial empire, with Italy anxious for the African coast right against her, with Russia intent upon extending and consolidating her power in Asia, with the other powers jealously watching these, however great and powerful England may be, the strain of such entanglements cannot but tell upon her, and one day she may find herself in a predicament in which India may simply hang as a millstone on her neck. (Loud applause.) We must not forget the contingency of the American powers appearing on the scene and complicating matters dreadfully. Ireland is another thorn in the side of England, and what a lesson she teaches as to how hard and difficult it is to undo the mistakes of a policy of force centuries after they were committed! How nobly has England been struggling to redeem the consequences of such a policy, and yet how slowly she succeeds in undoing the mischief of the past! But, secondly,

there is another Nemesis attending the policy of force. That policy would require day by day larger English armies and larger English civil services. In progress of time, large numbers of Englishmen trained in the maxims of despotism and saturated with autocratic predilections would return to their native home, where they could not but look with intolerance on free and constitutional forms. This is no visionary speculation; careful English observers have already noticed traces of such a tendency. In the course of a few generations such a tendency, if not checked, would develop into a mighty influence, and the free and constitutional government of England, which has been so long the pride of the world, would be placed in the deadliest jeopardy. (Cheers.) Rome was once proud of her sturdy freedom and her republicanism; she lost both in the extension of her despotic empire. She has left, however, a valuable lesson, and it has been well and truly said that, for the sake of all that she values most, her own freedom and civilisation, England must raise India to her own level, or India will drag her down to hers. (Loud applause.) The third consideration on this point I have to lay before you relates to the benefit to be derived from the commercial intercourse between the two countries. With a policy of force, as I have said before, the resources of India would be drained in the first instance in maintaining large costly armies and huge services; the country would be thus too much impoverished to admit of her developing the great material resources which Nature has showered on her. In India, impoverished and emasculated, the English merchant would only be an emaciated attendant in the rear of the English soldier and the English civilian, and English commercial enterprise, more glorious even than her military enterprise, would find no congenial field. I have thus, gentlemen, very hastily and very imperfectly sketched the consequences to England herself of a policy of force. Now look at the other picture. With India educated, civilised, contented, and loyal, what a help she would be to England in her time of need, what a field for commercial enterprise, what reciprocal benefits from intercommunion in every way! (Loud cheers.) How great England is even now, with her Indian possessions governed on the present declared policy of the Crown! She would wax greater and greater with every legitimate development of that policy. I say, therefore, gentlemen, that of the two policies on which India could be governed, England has chosen that which will secure her own best interests with those of India herself. (Applause.) When, in the inscrutable dispensations of Providence, India was assigned to the care of England, one can almost imagine that the choice was offered to her, as to Israel of old: "Behold, I have set before you this day a blessing and a curse. A blessing if ye will obey the commandments of the Lord your God which I have commanded this day; a curse if ye will not obey the commandments of the Lord your God, but turn aside out of the way which I have commanded this day, to go after other gods which ye have not known." England has chosen wisely and well; she has discarded the temptations held forth by the passions of selfishness, prejudice, and vain-glory, she has chosen to follow "the Eternal that maketh for righteousness." She has deliberately declared by the mouths of her greatest and most trusted statesmen, she has proclaimed it through the lips of Her Gracious Majesty herself—(cheers)—that India is to be governed on the principles of justice, equality, and righteousness, without distinctions of colour, caste, or creed. (Loud applause.) Our English friends, therefore, gentlemen, must make up their minds to discuss this Bill on the basis of this declared policy of the Crown. (Cheers.) On that basis I say the case for passing the Bill is simply irresistible, as my friend Mr. Tyabjee has shown. I will only refer to one argument, which may be shortly described as the "anomaly" argument. Now, gentlemen, this word anomaly has a good deal to complain of as to the treatment it has received at the hands of the opponents of this Bill. Never has any word in the English language before been so cruelly maltreated. But it must sit quiet under its injuries at present, as till the Bill is passed it cannot secure conviction before a European magistrate. This anomaly argument, however, is perfect if it is properly regarded. It derives its force from actual fact and experience. However anomalous the position of Englishmen in India, still it can be made, and has been made, the basis of a righteous policy. In the prosecution of that policy, Native magistrates have already exercised

jurisdiction over Europeans, with the most satisfactory success, in the Presidency towns. Race feeling and Native perjury have not been able to mar the experiment. But it is said that that is because of the existence of a public opinion in the Presidency towns which does not exist in the Mofussil. But this plausible argument yields to a close examination. The argument admits that public opinion is sufficient to countervail the dreaded consequences of race prejudice and false swearing. Let us see, then, if in the Mofussil there is not a force which can operate in the same way. I say that there is, and a stronger one than public opinion, that of the official opinion of the European district officers, which would work on the Native magistrate more directly, more expeditiously, and more closely, as all his interests and predilections and associations would closely connect him and make him dependent on them. (Applause.) I say, gentlemen, this argument takes the whole question from the domain of speculation, and brings it within that of observed fact and experience, which establish that Native magistrates can be safely trusted with jurisdiction over Europeans. Before concluding, however, I am desirous of saying a word about the storm of passion and prejudice which, commencing in the Calcutta Town Hall, has so spread over the whole land. (Hear, hear.) Some of my Native friends are disposed to be very hard upon these angry and excited people. I, for one, gentlemen, however, am inclined to make great allowances for, nay, almost to treat with tenderness, this sudden ebullition of anger and fury, when I realise the real character of it. (Hear, hear, laughter, and applause.) Gentlemen, all men have their nobler and baser instincts struggling within them, and you will find that even in the most well-disciplined organisations, in the most well-balanced minds, after the nobler instincts have well established their sway, a moment comes when the smallest rift upsets the work of years, casts everything into confusion, and generates a whirlwind at which those who knew the men before as good and worthy stand aghast. (Cheers.) So it seems it has been the case with Europeans in India. But this abnormal ebullition lasts only for a short time, and I am sure, gentlemen, that soon after this Bill is passed—(cheers)—as passed it will be, Englishmen will themselves smile at the wonderful things they have said and done about this Bill. (Hear, hear.) At present dire prophecies are proclaimed as to the ill-feeling which has been created between Natives and Europeans by the introduction of this Bill, which is to leave effects for ever so long. Gentlemen, I will, with your permission, indulge in a truer vein of prophesy. The newspapers have recently informed us that Mr. Branson has left for England. (Laughter.) Most probably he will return a short time after this Bill is passed, and there has been time for angry feelings and prejudices to calm down. I can then picture to myself, Mr. Branson and Lalmohun Ghose, as soon as they meet in Calcutta, rushing into each other's arms—(loud laughter)—singing the song,

“As through the land at eve we went,
And plucked the ripened ears,
We fell out, my wife and I,
O, we fell out, I know not why,
And kissed again with tears.
And blessings on the falling out,
Which all the more endears,
When we fall out with those we love
And kiss again with tears.”

(Loud laughter and applause.) In presenting this touching tableau, I say, gentlemen, that this Bill, which Lord Ripon has introduced in the honest and well-considered prosecution of his far-sighted and sagacious administration, holds forth hopeful promises of improved relations between the Natives and Europeans in this country.

The speaker resumed his seat amidst great cheering.

The Hon. Rao Saheb V. N. Mandlik said—Sir Jamsetjee Jejeebhoy and gentlemen,—The task of reading the memorial which is to be adopted to-day has been entrusted to me, and before I carry it out I take the liberty of submitting a few remarks for your consideration. If it were left to me, I should have preferred to place before you the resolution which I have to propose, without any prefatory speech, because after my two learned friends have exhaustively disposed of nearly all the arguments opposed to the

acceptance of the Bill, little is left for me to say on that head. There are occasions when silence may be misconstrued, and I consider the present as one of those occasions. I shall, however, content myself with a few words on matters on which my learned friends have not yet spoken, and to which no reference, except a passing remark, seems to have been made in the voluminous proceedings that have just come to hand of the debate in the Viceroy's Council. I believe, gentlemen, the present Bill is simply the historical outcome of the consistent, continued, high-minded, and generous policy of the Government of British India from the time of the Marquis of Hastings. (Cheers.) I pass over the period of more than 40 years, down to the time of the passing of the so-called Black Act, which removed the civil disabilities of the trying judges here. All civil claims could after that Act be tried, and are now being tried, from the Himalayas to Cape Comorin, by all judges of all nationalities, according to the powers entrusted to them by the statute law of the country. At the time of the renewal of the last Charter, or rather at the time of the discussions for the renewal of the last Charter, in 1852-53, up came the question of the extension of the powers of proper persons selected from the Native community to represent the various administrative branches of the service. Persons of mature experience, like Sir George Clerk and Sir Frederick Halliday, questioned, on grounds which some of you might pronounce whimsical, the expediency of admitting Natives into Legislative Councils and the superior branches of the service, and their several arguments in support of their views may be found in the Commission Books of 1853. The Lieutenant-Governor of Bengal (Sir Frederick Halliday) urged that if the natives of this country were appointed to high posts, it would occasion jealousy and other evils; and he mentioned the case of a gentleman appointed to a high office by Lord Dalhousie, in support of this view. But, gentlemen, experience has shown that those fears were groundless. The fact is that within 10 years of giving his evidence Sir George Clerk himself, in the Durbar Room of this very Town Hall, congratulated his Native colleagues in the Legislative Council on their admission into that assembly to assist the deliberations of Government. (Cheers.) Subsequent experience has shown, and will show, how far the Natives have realised the expectations formed of them in the discharge of the important duties of legislators. The next step was to declare the High Courts open to the admission of qualified Native gentlemen as judges of these courts, or of those courts which are known throughout the land as the courts of the Queen-Empress. Here, for the last 20 years, every subject of the Queen has been amenable to the civil as well as criminal jurisdiction of qualified Native gentlemen who have the honour of seats on the benches of these high tribunals. Experience has also shown that even criminal sessions held by these judges have caused no inconvenience, no public scandal, no injustice, nothing unfair, on the part of those who were either being tried, or those who tried them. When I have spoken of the very heads of the judicial administration, you will pardon me for not going into details. However, there is one point which I must here mention. As I have said, the present measure is simply the historical outcome of the educational and political policy of the Government of India. Gentlemen, the political policy was enunciated so far back as 1833, in the discussions which preceded that year with reference to the India Bill, which was passed. But in the educational policy there have been several changes and perturbations, and after the memorable year 1857 there were not wanting many, be they natives of India or foreigners, who attacked the policy of the State on the ground that the education that was given was not the best calculated to promote the political interests of the British Empire. You will remember that the policy of the "Friend of India" at the time was, if I may say so without offence, certainly opposed to the interests of the people of that magnificent province where that paper is published, namely, the masses of Bengal. And when I say the masses of Bengal, I do not exclude the masses of their countrymen in other Presidencies. But you must remember that the tone of the paper takes its colour mostly from the writer's predilections for the inhabitants of Bengal. After examining the whole of the policy, in one of the articles which you will find in the early numbers of 1859, the writer pronounces unequivocally that much as he dislikes the young educated Bengali, or for that matter the young educated Native, he prefers him altogether to those who are set up

against him, namely, the old-fashioned and pliant people of "the good old times." (Cheers.) If, therefore, you review the several periods from 1853 to 1859, from 1859 to 1863, and from 1863 to 1883, you will find that a period of some 20 years has elapsed during which Native covenanted civilians have been discharging their high functions to satisfaction. For a period of nearly 30 years Natives have been acting as judges of Her Majesty's High Courts. For more than 20 years Native gentlemen of education and influence have been discharging their duties to the very best of their power in the various consultative Councils, both of the Supreme Government of India and of the provincial Governments of Bombay, Bengal, and Madras. If any disaster has resulted from any of these measures, if members of the Legislative Council like Mr. Quinton and Mr. James Gibbs—the honourable gentleman whom you have often heard in this hall (cheers)—if these gentlemen tell you that this Bill is an administrative necessity, all I can say is that we are in very good company in supporting a movement which has the approval of several successive Secretaries of State, both Conservative and Liberal, and several distinguished Viceroys, not the least distinguished of whom is the one who now fills to the glory of the British Empire the high office of the Queen's Deputy. (Loud cheers.) If, I say, the Bill, backed up by high legal and constitutional authorities, and by the voice of the impartial public represented by the House of Commons, and having for its object the practical, though it may be the distant, improvement of more than 250 millions of mankind, were presented to the public, and if the public were asked for its vote on the Bill, all I have to say is that you will pause before you reject such high authorities as are in support of the measure. But seeing how you have received the speeches of my predecessors, I have no doubt that with one unanimous verdict you will say that we should adopt such a memorial as the one which I shall now read and submit to your acceptance. (Cheers.)

The memorial is as follows:—

Here the memorial (which will be found printed at page 465) was read.

Mr. Nanabhoy Byramjee Jeejeebhoy, who was received with loud cheers, said:—Honourable Sir and gentlemen,—I beg to second the Hon. the Rao Sahib's proposition for the adoption of the memorial. After what has fallen from my friends who have already addressed the meeting I believe very little is left for me to say in support of the memorial, which so forcibly speaks for itself. And yet, gentlemen, as a native of India, as a faithful, though humble, subject of Her Most Gracious Majesty the Queen-Empress, and as a citizen of Bombay, I feel I should not be content with the mere formal seconding of the resolution for the adoption of the memorial. Whatever its intrinsic worth may be, I feel that I should say a few words by way of a brief exposition of its great importance to some of the most vital concerns of my countrymen, the natives of India. I think this to be necessary, the more so when it is urged from quarters, if not quite friendly, certainly by no means deadly hostile, to the Hon. Mr. Ilbert's Bill, that it does not concern the Natives, and therefore no Natives need interfere in the matter of it, which, again it is said, must be settled between the Government who have attempted the proposed amendments in the Criminal Procedure Code and the opponents of the same. We are, in fact, asked by those who claim to be our friends to be quiet lookers-on, as if we were nobodies having anything to do with the subject-matter of the much-abused Bill. (Applause). Now, gentlemen, you will have remarked from what is set out in the memorial that the Bill concerns us natives of India as much as any other class of Her Majesty's subjects living or residing within the boundaries of her Indian dominions. (Hear, hear.) Our political status; our social well-being; our rights as British subjects, guaranteed to us by Acts of Parliament and gracious Royal Proclamations, suggest to us the necessity of seeing the Hon. Mr. Ilbert's Bill become the law of the land. And when urged on by such necessity it cannot be a fault in us if we decline to remain passive observers of what is going on around us or in the country. Duty and interest alike have called us together here to raise our voice in the manner we are now doing in support of the political, necessary, and provident measure of the Government of the Most Noble the Marquis of Ripon. (Loud cheers.) By means of the

memorial we shall convince all the world how earnestly we feel the great importance and high value of the proposed measure, and render nugatory the misrepresentation, referred to in that memorial, that the natives of this country care nothing for the Bill. We, for ourselves, and on behalf of our countrymen at large, state in the most emphatic and unequivocal terms possible, that we are "keenly and deeply interested" in the Bill, since the principle therein involved is of the most vital importance to our worldly concerns and welfare. (Loud applause.) That principle embraces the most momentous questions referred to at the end of the memorial, namely, whether the natives of this country, no matter what their qualifications, their attainments, &c., are always to be treated as an inferior race of men, and whether that inferior race of men and whether that inferiority is constantly to be marked by "invidious and galling distinctions." A partial solution of this question, in a manner fitting the promises and policy of the British Government, will be the passing into law of the Bill of the Hon. Mr. Ilbert. Hence the solicitude and the eagerness of the natives of India, especially the intelligent classes, to support actively the action of the Government of India in the matter. (Cheers.) Action taken, be it remembered, in consequence of the urgent, clearly-pronounced, and oft-repeated wishes of the representatives of our countrymen in the Legislative Council and the public press for some legislation of the kind which the Bill now seeks to provide. We have assembled on the present occasion to prove by our demonstration of this day that we cannot remain passive while the modicum of justice due to our country, according to the deliberate Acts of Parliament and solemn Royal Proclamations, is formally granted to us in the manner that the Bill of the Hon. Mr. Ilbert proposes to provide and our countrymen have been persistently praying for; and when doing so nothing is further from our intention and our act than doing the least harm or injury to our fellow British subjects. (Hear, hear.) While seeking for further administrative convenience to the State and agreeable redress from what we feel to be a grievance to ourselves, we have weighed carefully and dispassionately and with a lively sense of all that is due to our fellow British subjects. We have reflected seriously and deeply, so as to make our memorial perfectly consistent with our desire to give no ground of just complaint to our European friends. Nor has our task been difficult or unpleasant, excepting so far that we have had to do our work against, not any valid or reasonable opposition to the Bill on the part of our European friends, but against their unjustifiable prejudices against our countrymen—mistaken notions about their so-called privileges. The same have been disposed of by previous speakers, and to the effect as stated in the memorial which I am asking you to adopt. The memorial embraces answers to all the objections hitherto urged against the Bill, and in a manner that all independent judges must admit as sufficient in every sense. It clearly shows that the tendency of the Bill on becoming a pucca Act will be to improve the social and political status of the Natives, to add to the convenience of the Government, to strengthen the cause of public justice, and to occasion no harm or humiliation to Europeans, such as some of the opponents of the Bill are pleased to imagine without sufficient cause. Gentlemen, I would here refer you to what the state of affairs is under the present law, and you will at once see the force of my arguments urging you to support the memorial in order to improve that state as regards the Natives without inconveniencing Europeans as far as the ends of justice are concerned. The introduction of railways and the opening up of other industries in the interior of the country has enabled many Europeans, generally of the artizan class, to live in the Mofussil, and it very often occurs that these men come into collision with the Natives, and as the law stands at present any case in which a Native has to lay a complaint against a European, he is under a considerable disadvantage, in that he cannot obtain justice on the spot, but must go in quest of it perhaps 30 or a hundred miles away from home, where a European magistrate may happen to be. In the majority of cases the complainant, who is a labourer earning three or four annas a day at the most, is obliged to put up with a wrong rather than give up his work for days together, and to take his witnesses to the Court at other considerable sacrifices to himself. It is for the protection of such men, and not simply for the glorification of the Native officials, that a change in the existing law is called for, and I am

surprised that there should be so much alarm exhibited by the better class of Europeans against the just and impartial provisions of the Bill. It is also surprising that foreigners should have joined in the opposition to the Bill, which affects only the limited class of British subjects defined in section 3, clause V., of the Criminal Procedure Code. Those Europeans and Eurasians who fall outside the definition given in the section above referred to will not be worse than they are now were the Bill to become law to-morrow. They are at present as much liable to be tried by Native judges and magistrates as any Native, and if anything, the passing of the proposed amendment will be beneficial to them. I shall show how. Take a case in which a German gentleman in the Mofussil has had a quarrel with his English servant or neighbour, and the two obtain cross summons against each other. As the law is administered at present, the German could be proceeded with before the Native magistrate on the spot, whereas the countercharge against the Englishman would have to be forwarded some 50 miles or a hundred to be adjudicated by a British magistrate and a justice of the peace. Under the proposed amendment the German would have equal justice with the Briton, and so would the Native. I am surprised at the demand which is being made in certain quarters to have justice dealt out according to the nationality of the opposing parties instead of the merits of the case. The same authorities that now watch the European judicial officer will, we are sure, guide the Native magistrates on whom it is proposed to confer the extended jurisdiction. Are we to suppose that a man of a Native sessions judge's training, education, and standing will allow his prejudices, if he has any, to so blind his judgment in any case coming up for trial before him as to risk the chance of an ignominious dismissal and the inevitable ruin of his official position and professional reputation. The same safeguards which protect Her Imperial Majesty's poor and ignorant Native subjects in the Mofussil will watch over her European subjects. Under section 499 of the Criminal Procedure Code, even a European sessions judge has no power to pass a sentence upon a European British subject exceeding one year's imprisonment. Under section 335 of the same Code, the High Court has power with the consent of the Local Government to hold the criminal sessions at any places in the Mofussil. At such sessions it would be competent to a Native judge of the High Court to try a European British subject and to pass upon him the highest sentence known to the law. Under the statute creating the High Courts a Native barrister of five years' standing or a Native vakeel of 10 years' standing is eligible for appointment as a judge. Considering the block that at present exists in the Civil Service it would take a Native civilian 15 or even 20 years before attaining to the position of a session judge. How very anomalous then that a Native barrister of five years' standing, if he be so lucky as to obtain a seat on the bench of the High Court, can under the existing law try a European British subject in the Mofussil, but not so a Native civilian with a much greater amount of actual training as a judge! But anomalies do not end here. Under the statutes obtaining in England, any foreigner, much more a native of British India, can obtain letters of naturalisation in England giving him the status of a European British subject. With a view to evade the jurisdiction of Native magistrates in the Mofussil it would be competent to any native of India, by simply going through the formalities provided by the statute, to obtain the status of a European British subject as defined by the Code. What the proposed amendment seeks is to confer upon a few well-tried and trusted officials of long service and assured antecedents a certain limited amount of jurisdiction over Europeans for the better administration of justice in this country; and I am fully confident that those men who will be chosen for the exercise of this privilege will do full justice and credit to the choice of the Government and the traditions of the service. Gentlemen, there are many other arguments which I could bring forward in support of the Bill, but I trust sufficient has been said to-day to convince you of the desirability of adopting the memorial; and as other speakers are to follow me, I content myself by seconding the resolution with the above remarks. (Loud cheers.)

Mr. Nakoda Mahomed Ali Rogay, who was accorded an enthusiastic reception, said:—Mr. Chairman and gentlemen,—The resolution entrusted

to my care is one which must of necessity be carried by this meeting, inasmuch as it relates to steps being taken for forwarding the memorial just read and adopted to the Government of India. I will not, gentlemen, take up your time by inflicting a speech upon you at this late hour, and in this hot room, where we are nearly roasted up here. (Laughter.) But the importance of the occasion demands that I shall adduce some more arguments in favour of the Jurisdiction Bill, in continuation to those which had already been put forward by my friends the Hon. Budroodin Tyabjee, Mr. Pherozeshah M. Mehta, the Hon. Rao Saheb V. N. Mandlik, and Mr. Nanabhoj Byramjee Jeejeebhoy. (Hear, hear.) The opponents of the Bill have laid a serious charge against the Viceroy of India, namely, that in introducing Mr. Ilbert's Bill in his Council he is actuated by the anxiety of being popular among our countrymen. (Laughter and applause.) On calm consideration of the subject and the conduct of the Viceroy ever since he took the reins of government, you will see how unfounded that statement is. You know how sensitive we were on the question of the abolition of the import duties, how our papers and public meetings held at the time denounced the Government and showed the depth of Native feeling on that subject, and yet the Viceroy, if he had been a popularity-seeking man, could even, if he were not powerful enough to resist the determination of the Home Government, easily have expressed an opinion against the import duties, as Lord Northbrook had done on another question, and as he himself, the present Viceroy, had done on the question of the payment of part of the cost of the Egyptian war by India. (Cheers.) This fact, taken in connexion with his action in regard to the License Act, the Arms Bill, and the Vernacular Press Act, shows that the charge against the Viceroy being a popularity-seeking man is entirely unfounded, and is based only on the imagination of the opponents of the Bill. (Loud applause.) The Vernacular Press Act, you will remember, gentlemen, was passed by Lord Lytton; and Lord Cranbrook, who was our Secretary of State at the time, and a Conservative, did not quite approve of it, and, in a despatch on the subject, laid down certain rules for the operation of the Act which made it, to a certain extent, harmless. (Cheers.) Both Liberals and Conservatives were to a certain extent agreed that the Act was perfectly unnecessary, and yet our Viceroy, immediately after taking the reins of government, but waited and watched its operation, and then acted according to the dictates of his conscience. (Loud applause.) So much for the charges brought against the Viceroy of India of being a popularity-seeking man. (Hear, hear.) It has been alleged that the extension of the jurisdiction over European subjects to Native magistrates will cause acts of injustice in the Mofussil, but that argument has been ably disposed of by Mr. Pherozeshah Mehta. (Hear, hear.) In Presidency towns Europeans of the higher status and rank, and all the members of their families, are subjected to the jurisdiction of Native magistrates. If such high personages are subjected to the jurisdiction of our magistrates, why on earth there should be any objection against the extension of the same privilege to the Mofussil I cannot conceive. Are not public opinion and the public press necessary in every part of India to expose any act of injustice done to any class of Her Majesty's subjects, be they European or Native? I ask you that question. The answer is simple—They are. (Hear, hear.) Well, then, where is the argument? It is simply absurd to say that only for the trial of Europeans public opinion and the public press are necessary in the Mofussil. (Cheers.) There is not the least doubt that there are cases on record in which both European and Native magistrates have committed acts of injustice; but these cases, I think you will all agree with me, are very few. (Hear, hear.) But the mere fact of there being such cases on record does not make European magistrates, as a class, unfit to try Natives, nor, on the other hand, does it make Native magistrates unfit to try Europeans. (Loud applause.) The only correct criterion for judging these matters by is, I think, the fitness of each official entrusted with magisterial powers, to whatever class he may belong. Judicial training, long experience, and a reputation of being a good judge are necessary for every class of magistrate. It is just as dangerous to entrust full powers to inexperienced European members of the Civil Service as it is to any inexperienced Native member of the service. In both cases the necessary qualifications are experience and a reputation for

judicial training, and nothing more. (Hear, hear.) - In Ceylon, which is also a British possession, no such distinction of race existed as is apparent in this country. Those people who have been asserting that the passing of this Bill would check the flow of European capital into India have only to go to Ceylon to see how much European capital has been sunk in coffee and cinchona estates, and yet there exists no such distinction of race, and there has been no cry from the European residents in that colony. (Loud applause.) One of the local English papers here, only three days ago, sneered that this agitation in favour of the Jurisdiction Bill is confined to English-speaking natives of India, and that the mass of the people, one and all, are in favour of the European agitation in regard to the Bill. (Loud laughter.) I must confess, as one of the English-speaking natives, and one who has a more intimate knowledge of the masses than any European can boast of, that, so far as my information goes, I have not been able to authenticate the assertion made by this paper. (Renewed laughter and applause.) It may be that the editor of the "Times of India" may have some superhuman power of judging the feeling of the Natives. (Great laughter and cheering.) I will give you an instance of how Europeans regard Natives which came under my observation in travelling from Nugger to Poona in October last. Soon after my arrival at the junction where the Poona train meets with two European fellow-passengers,* a party of European and Native soldiers came from Poona, and halted there to catch the train from Dhond to Nugger. The European soldiers had, unfortunately for our peaceful slumbers, taken too much of something or other, and they created such a row by yelling and shouting that it was impossible to sleep. I was walking on the platform, and heard the Native soldiers speaking together about the prizes won at the rifle match, when one of the European passengers, a gentlemen of military appearance, came up and bullied them for talking so loud and disturbing the passengers in the waiting-room. (Laughter.) Of course the poor fellows stopped, and said in a very low whisper one to the other, "See the justice of the saheb. "The European soldiers have been yelling and shouting, and no notice is taken, "but while we have only been talking a little we have been bullied." (Cheers.) That is the feeling of the masses in such cases of injustice, and therefore the assertion made by the "Times of India" is altogether unfounded. (Cheers.) I only hope that this measure will be passed, and I am sure the results of the working of the Bill will be as has been ably described in the poetry quoted by Mr. Pherozeshah Mehta, which I need not repeat, but which you have all got in your memory at the present moment. At the same time, if we had not called this public meeting the enemies of the Bill would have said, "This agitation is confined to Bengali Baboos only. Mr. Gupta is only a Bengali magistrate; it is only a local matter." But they forget that a question which affects Bengali Baboos affects all the natives of India. (Loud applause.) Our seeming indifference, had we remained silent, would have been taken advantage of by those who want a privilege, the enjoyment of which is injurious to our interests, to be retained on the statute-book. (Cheers.) I see, gentlemen, that you are all impatient. (Hear, hear; no, no, and laughter.) I am always unfortunately placed at meetings of this kind, and cannot therefore do justice to the subject. (More laughter.) And my notes have been taken away by my friend Mr. Mehta. (Great laughter, which continued for several moments.) At the same time, you have been saved from the infliction of a speech which, so far as it went, I must admit was a poor one. (No, no, and laughter.) I have one consolation in sitting down, however, that able speakers who preceded me have adduced sufficiently potent arguments to carry the resolution which I have to propose, namely, "That the Committee of the Bombay Branch of the East India Association "be requested to take necessary steps for forwarding the memorial to the "Government of India." (Applause.)

Mr. Dinanath Raghunath Khote, who was accorded a warm reception, said :—Gentlemen, I have very great pleasure in seconding this proposition, which is only a natural sequel to your unanimous approval and adoption of this memorial. (Hear, hear.) It is necessary that the Government of India should be made aware of the views and opinion of the natives of this country,

* Sic in the report received from India.

as a body, in regard to the Jurisdiction Bill, and the forwarding to them of this memorial as the outcome of a meeting such as we have here to-night, of a fully representative character, will, in a measure, have the desired effect. (Applause.) Now, while commending this proposition to your favourable consideration, I beg leave to offer a few remarks on the general aspect of the question at issue. The present agitation against the Bill, as you are all aware, originated with a few planters in Bengal. If they had stood alone unbacked and unsupported, their agitation would have died away without leaving behind the faintest trace of its existence. (Cheers.) Unfortunately, however, it has been made a common cause by the European community generally, and the result was the boisterous and unpatriotic meeting in the Town Hall of Calcutta. (Loud applause.) Now, gentlemen, all the opposition to this Bill is based on arguments which, when dropped into the crucible of analysis, appear alike sentimental, illogical, and untenable. (Hear, hear.) We will here examine a few of them, and see first, how, in the absence of better and sounder reasons, the opponents have taken refuge in the stock argument of the "cherished and privileged rights of Britons." (Loud applause.) If it had been really and intrinsically a valued right, involving no injury to the interests of the other and by far the larger portion of Her Majesty's subjects, we should have respected it with all our hearts. (Applause.) But when this alleged vested birthright comes to be asserted irrespective of, and without regard to, the injustice which it inflicts on the other races, one cannot help losing patience at the boldness of this claim. (Hear, hear.) And what, may I ask, becomes of this right, the so-called birth-right in the Presidency town? If a "cherished birth-right," why has it been waived there? And has this waiver led to any serious evil consequences to the European community in the Presidency towns? (No, and applause.) This gives rise to another question. Was any opposition then made? If made, how did it become powerless? If not, why was the "cherished birth-right" not then thought of? But under whatever circumstances it was abandoned in the Presidency towns, the fact remains that already in more places than one has this privilege been given up,—and this takes away from it the essentially "cherished" character with which it is now sought to invest it. Gentlemen, the removal of this privilege in the Presidency towns is no uncertain indication of the ultimate fate of the present agitation (cheers); and well had it been for India if the Anglo-Indians of our own day, profiting by the wholesome experience of the past, had paused before attempting to disturb by their ill-timed agitation the harmony which was being slowly but steadily developed between Europeans and Natives all over the land. (Applause.) Now, the privilege which we are asked to look upon as a "cherished" privilege was originally merely a temporary and a permissive privilege conceded to British-born subjects under the exceptional circumstances of a newly subjugated and half-civilised country, and in the absence of competent Natives eligible for higher posts in the administration of justice. (Cheers.) But times have changed. The consolidation of the Indian Empire is now an accomplished fact, and, thanks to the benign policy of the British Government, the India of to-day is not what it was even half a century ago. (Applause.) We have now Native gentlemen quite prepared to undergo any inconveniences and privations to compete in intellectual accomplishments with Englishmen in the very land of their birth. (Cheers.) We have now Native gentlemen educated in India quite able to vie successfully with Englishmen in every department of Her Majesty's service which calls for the exercise of high intellectual powers. (Renewed cheers.) Now, it must be remembered that it is on men of this high mental calibre, who in addition are also the tried and trusted officials of the British Government, and who by their capacity and long and varied experience in the judicial line have gradually risen and reached the top of the graded ladder, that this extended jurisdiction is intended to be conferred. (Hear, hear, and applause.) But no! the oppositionists will have none of these, not even the picked flower of the land, and men with high accomplishments and undoubted credentials are set down as incapable of trying offences, how trivial soever, committed by Europeans. This, gentlemen, is a libel. (Applause.) It is a libel on the education imparted in England; it is a libel on the education received by Native youths in India. And although we have not, so far, a fair share of the Native element in either

of the services, covenanted or uncovenanted, yet the honourable and the unimpeachable manner in which those who have the good fortune to belong to them have been known to discharge the responsible functions of their respective offices; this, I say, gives a conclusive answer to such ungenerous and baseless insinuations. (Applause.) Equally unfounded and uncharitable is the attack that Native magistrates are liable to be influenced in the trial of Europeans by race prejudices. As a matter of fact, Native officials generally are, and must in the nature of things be, exceedingly cautious and circumspect in dealing with civil and even more with criminal cases in which Europeans are concerned. And if they err at all, the error in the majority of cases will be found to indicate a leaning in favour of the European. (Hear, hear.) Probably the leaders of the anti-jurisdiction movement, who are now opposing the Bill tooth and nail, may yet find, to their utter chagrin and disappointment, when the Bill passes into law, which sooner or later it is destined to, despite their antagonistic attitude, that European offenders will practically not object to be tried by calm, sedate, and experienced Native magistrates. (Cheers.) It is also suggested that the Natives in the Mofussil will, by virtue of this Bill, keep concocting conspiracies against Europeans. If it were not for the gravity with which such an argument is advanced, one would be tempted to treat it with silent contempt. (Hear, hear.) Gentlemen, such fears are absolutely chimerical, and only serve to show the excited state of the mind which conceives them. I say it is monstrous to suppose that the poor, helpless people of the Mofussil, to whom the bare earning of a meagre livelihood is an effort they can scarcely cope with, will be able, even if they could dare, to indulge in the idle and costly luxury of false prosecutions against Europeans, who, when they are true and good, are almost worshipped and identified with Sircar and Ma-bap by these people in the Mofussil. (Hear, hear.) But assuming for the sake of argument that any such cases did arise, have not the Europeans the advantages of the higher intelligence, the greater capacity of co-operation, all the facilities of the railway and the telegraph, and the voice of the public press in their favour, wherewith to counteract the effects of such a conspiracy? (Applause.) Now, another stock argument advanced with some stress by the oppositionists is that the time has not yet come for the introduction of this measure. Gentlemen, I can conceive of no argument more fatal to their cause than this. It is an irony of fate that when one has to defend a feeble cause one is unconsciously led into the use of arguments which cut the ground from under one's feet. (Hear, hear.) Now what does the argument really mean, this argument that the time and the imperative necessity for conferring this right on the natives of India have not yet arrived? Does it not mean by implication that the much talked-of "cherished right" will vanish, and with it all objections to the Bill, when the necessity for its introduction asserts itself with overwhelming force? Does it not show a lamentable weakness on the part of the oppositionists to admit that a time will come when they will not be able to breathe the faintest murmur against this dreaded Bill? And is it not short-sighted policy, the policy of men but imperfectly schooled in the political academy, to oppose a measure for the poor satisfaction of shelving it when they feel sure that the unseen future may render it practicable any day? (Applause.) Let these gentlemen realise the invincible truths laid down by Mr. Wordsworth in his memorable letters to the "Bombay Gazette." (Loud and prolonged cheering.) Gentlemen, I will here take the liberty to quote a sentence from one of these letters as directly bearing on the point I am just discussing. Mr. Wordsworth says:—"The real test of statesmanship is surely the capacity to foresee difficulties and emergencies, and to divert and neutralise them by timely legislation." (Loud cheers.) Gentlemen, the doctrine enunciated in this sentence is aptly illustrated by the Native adage which upbraids the folly of procrastination, and points out the un wisdom of setting about digging a well when the house is on fire. (Laughter.) Now, statesmen of the school of Sir FitzJames Stephen, whose extreme Conservatism is only another name for habitual coldness to all that means the true progress of India, inculcate the doctrine that India must be treated as a conquered country and governed by force. It is useless at this time of the day, and in an age of progress and enlightenment, to battle with a retrograde argument of this character. (Applause.) I would only refer such thinkers to the history of their own country, and

hope they may take warning from the bitter experiences of the past. Men of this stamp are not only the enemies of Indian progress, but they may truly be declared as the enemies of England herself. Let them realise the declared principle and policy of just and equal administration without distinction of caste, creed, or colour, vouchsafed to India by Royal Proclamation, and rise to a correct appreciation of the growing necessities of this country. (Applause.) Let them sit at the feet of political thinkers like John Bright—(loud applause)—and learn that the only way to govern India is to govern it through the affections of its people. (Applause.) Gentlemen, I will not linger more on this subject, although the justness of one's cause inspires one with ardour. (Hear, hear.) Let us have implicit faith in the benign and generous policy of the English nation, whose noble instincts of justice and liberality will surely rise above the level of those Anglo-Indians who advocate a more or less narrow and short-sighted policy. (Applause.) Let us have full confidence in the Liberal House of Commons. (Applause.) Let us have unbounded confidence in every righteous Englishman, who is true to himself and to his country, and who, adapting the well-known Latin exclamation to himself, can fittingly say, "Anglicus civis sum." (Loud and continued applause).

Mr. Kassinath Trimbuć Telang, who was received with loud cheers, said:—Mr. Chairman and gentlemen,—The resolution which has been entrusted to me runs as follows:—"That the Committee of the Bombay Branch of the East India Association be also requested to take steps to have the memorial, with the necessary alterations, forwarded to the Honourable the House of Commons in England." In proposing this resolution, it would be wrong, on more than one ground, if I were to detain you with any lengthy speech of my own at this late hour, and especially after the able speeches which have been addressed to you. But the subject which we are met to consider to-night is one of such great importance that I trust the meeting will bear with me while I make a few remarks on it. I do not propose to travel over the ground occupied so well by the speeches of Mr. Budroodin and Mr. Pheroza and the speakers who followed them. Nor, for obvious reasons, shall I say anything about the recent doings of our European friends in the Town Hall of Calcutta. These doings were of such a nature that, to borrow the language used on a celebrated occasion by a distinguished man now no more, the best rebuke we can administer to these gentlemen is to refrain from following so dangerous an example. (Cheers.) There was, however, one point, gentlemen, made, I believe, at the Calcutta Town Hall, and certainly made in the public press since, to which I feel bound to refer. It has been asserted that the Bengalis entertain feelings of hatred and hostility to the British nation. Well, gentlemen, having had the honour, as you are aware, of being appointed to serve on the Education Commission, I had recently to spend a few months in Calcutta. And during the period of my stay there I came into close, intimate, and frequent contact with the leaders of thought and the leaders in public affairs of the Bengali nation. And having frequently had frank conversations with many of them, having thus seen them in a sort of mental undress, so to speak, I venture to affirm, and to affirm very confidently, that this hatred and hostility is a mere figment of some alarmist brain, and has no existence in reality. (Loud cheers.) I think that, believing this, as I do believe it, to be the truth upon the subject, I am bound, if not by any other obligation, at least by gratitude for the kindness which I received from my Bengali brethren while I was among them, to make this statement to correct misapprehension. I need not, however, dwell any further on this point, and therefore I shall turn at once to the main subject, to which I wish to address myself. As I have said, I do not intend now to go into any of the positive arguments in favour of the Jurisdiction Bill. But I propose to examine the main points made by an eminent man, Sir FitzJames Stephen, in his letter on the subject. Sir FitzJames Stephen has held high office in this country, and now occupies a distinguished position on the English Bench. He is not only a lawyer, but a writer on jurisprudence, and a political philosopher who has thought out the ultimate principles of the political creed which he holds. (Hear, hear.) And, therefore, I need not say that his authority on such a subject as ours is very high, and I should be the first in ordinary circumstances to defer to it

but in this case I must say that if I were an opponent of the Jurisdiction Bill, I should be afraid of Sir FitzJames Stephen's championship. Many years ago he wrote a work entitled "Liberty, Equality, and Fraternity," which, I think, may with substantial accuracy be characterised as the gospel of force. (Cheers.) In that work he set himself in obtrusive antagonism to the doctrines of modern liberalism, by which I do not mean what is called by that name in the jargon of English party politics, but I mean liberalism in the broader and higher sense, as signifying those political principles which, for us here in India, are embodied in the great Proclamation of 1858. Well, as he holds those opinions, it is plain that even his support, if he supported any measure of government which involved any of those principles, would be an occasion of embarrassment. But apart from these general considerations, let us see for an instant what Sir FitzJames Stephen does say. His first proposition, not first in order in his letter, but first in importance, is that the policy of Lord Ripon's Government is shifting the foundations of British power in this country, or, to use his own expression, is inconsistent with the foundations on which British power rests. Now, I deny this entirely. I say that the principles of Lord Ripon's administration, as pointed out in our memorial, are in consonance with the long-established principles of the British Government, as laid down by Parliament and the Crown. (Loud cheers.) And I say, further, that those principles are in accord with the lessons to be derived from the study of past history. I remember being struck many years ago, in reading the "History of the Romans under the Empire," with a passage in which the author said that one great lesson to be deduced from the history of Rome was that all conquering nations, in order to render their government in the conquered countries stable and permanent, must divest themselves of their peculiar privileges by sharing them with the conquered peoples. Now, gentlemen, we all know that it is the proud and just boast of Englishmen that they are the Romans of the modern world, and that the British Empire is in modern days what the Roman Empire was in ancient times. If so, are we wrong, are we unreasonable, in asking that the lessons of Roman history, and, as Mr. Merivale points out, the lessons of the history of other ancient Governments also, should be adopted by our British rulers? (Cheers.) Is it not quite proper and reasonable for us to ask that the countrymen of Clarkson and Wilberforce, of Gladstone and John Bright—(loud cheers)—should not only adopt those lessons but improve upon them, and rise superior to the countrymen of Marius and Sylla, the Triumvirs and the Cæsars? I venture to say, gentlemen, that if Britons are now content to fail to carry out those lessons, and to fall short of the generosity of the Romans, it will be regarded as not creditable to them by the future historian. And as a loyal subject of the British Government I should be sorry for such a result. (Loud and prolonged cheers.) We next come to Sir FitzJames Stephen's second point. He says—Oh! it is all very well to ask for the abolition of these special privileges of Europeans, but every other section of the Indian community has its own privileges which the law recognises. And he gives as an instance the fact that Hindoos, Mahomedans, &c. have their own special laws of inheritance administered to them. Now, I venture to say that no fair comparison can be made between laws of inheritance and laws of criminal procedure. The former does not affect any one save the special community to which it is administered. What does it matter to John Jones whether the property of Rama, or Ahmed, Muncherjee goes on his death to his sons or his daughters, his father or mother or widow? But a law of criminal procedure, as has been already pointed out by other speakers, affects the other communities in a most important respect. It is plain, therefore, that the two cases which Sir FitzJames Stephen treats as identical are really distinguishable on essential points. Besides, it must be remembered that no other class privileges are recognised in the criminal law of British India; it is only in the civil law that they are so recognised. But, further, I am surprised at Sir FitzJames Stephen not alluding in his letter to one point relevant to this branch of the subject to which reference is made in his own volume already referred to. He has there pointed out that the British Government in India is, involuntarily it may be but still actually, interfering with the personal laws of Natives, even in matters connected with their religious beliefs, and is applying, as Sir Fitz-

James Stephen puts it, a constant and steady pressure to adapt them to modern civilisation—so that the Government, as Sir FitzJames Stephen himself puts it, is really heading a revolution. If then the Government is actually interfering with the personal laws of us unenlightened and uncivilised Natives, is there anything wrong in their interfering with those of the enlightened Britons, with whose views and opinions, feelings and wishes, they are much more familiar and in much greater sympathy? Is there anything unfair if we ask that the same measure should be dealt out to both? Sir FitzJames Stephen next refers to the special tribunals for Europeans maintained in Turkey and other countries. But there the European is protected from foreign courts to be subjected to British courts. Here he is protected from one class of British courts to be subjected to another. The difference is quite manifest between the two cases. Further, Sir FitzJames Stephen says it is only natural that every one charged with a criminal offence should wish to be tried by one of his own race and colour. But this leads to a difficulty, namely, that Natives may have a similar wish. And how does Sir FitzJames Stephen meet that? Why, he says that while no Native understands English sufficiently to conduct a trial in that language properly, attempts are made—mark the expression, attempts are made—to get European officers to study the vernaculars of the country. Now, gentlemen, I think it is not egotistical to say that the first part of the statement is the reverse of the truth. (Cheers.) For every one European that can be shown competent to conduct a criminal trial in a vernacular language, we can show at least one hundred Natives even more competent to do so in English. (Loud cheers.) And as to the second part, we have not to rely only on our personal experiences. As we say at law, “*habemus optimum testem confitentem reum.*” Many years ago a book was published by a Bengal civilian, called “*Life in the Mofussil*,” in which he very candidly admitted that, though he passed the examination in Bengali, he knew little or nothing of the language. (Loud laughter.) Here we have a test of the success of the *attempt* to which Sir FitzJames Stephen refers. I do not think, gentlemen, I need further detain you with Sir FitzJames Stephen’s arguments. His principal points have, I venture to say, been satisfactorily answered. There is, however, one argument to which I should like to refer before sitting down. It is put forward in the “*Times of India*” by a gentleman who signs himself “*Maratha*,” but whose nationality, from internal evidence, seems to be European and not Maratha. However, on the principle of measures, not men, we shall consider his argument as it deserves to be, whether it emanates from a veritable Maratha or not. He says Natives are not fit and competent judges of Europeans because the Native papers are writing about the cases of deaths of Natives at the hands of Europeans as if they were all cases of deliberate murder and the explanation of a ruptured spleen always untrue. He argues that as this view of the Native papers has not been disavowed by educated Natives, it indicates the state of their feelings towards Europeans, and renders them unfit judges for trying Europeans. Now, I am not one of these who believe that this explanation of the ruptured spleen is always untrue. (Laughter and applause.) I have no doubt that in many cases it is true, and that the language of many of our Native papers on the subject is exaggerated and without justification. But having admitted that, I do not admit the correctness of “*Maratha’s*” argument. I will not, however, analyse it now, but put another argument on the other side. We all know that many Europeans have spoken of the Native communities in a way which means that they consider us all as, on the whole, a people given to perjury. This opinion, publicly expressed by some members of the European community, has not been disavowed by others. And therefore, according to “*Maratha’s*” logic, the true conclusion to be derived from this is that Europeans are not fit judges for Natives. (Cheers.) This broad conclusion follows according to “*Maratha’s*” principles. Certainly in cases where Natives are charged with perjury Europeans would be, on those principles, unfit judges. Because whereas, according to the presumption of English law, the accused would have to be treated as innocent until the contrary was proved, in the mind of the European judge the Native prisoner would be guilty until he proved the contrary. Mark, I don’t say this would be a correct result. But I say it follows if “*Maratha’s*” argument is sound. I use it only as an *argumentum ad hominem*. See then

the deadlock. You cannot have European judges, and you cannot have Native judges. How then is the administration of justice to be secured? (Laughter and cheers.) I do not think, gentlemen, I ought now to detain you any longer. We have a very good case; let us take it before the House of Commons. It has been taken there already, in fact, by the opponents of the Bill. Let us place our view before the House. (Cheers.) By past experience we know that in such matters we can trust to the justice and sense of fair play of the British House of Commons. (Loud cheers.) Let us leave this matter also to their judgment, in the full confidence that it will be there decided on considerations free from all local passion and local prepossession. (Loud cheers.)

Mr. Vijbhucandas Atmaran said:—Mr. Chairman and gentlemen,—The resolution which has been just read and submitted to you for adoption is one which would easily commend itself to the good sense of this meeting. In moving this resolution, I do not propose to address you any arguments touching the principle of the Bill for the Amendment of the Code of Criminal Procedure, which is intended to confer upon a very few, tried, and efficient Native officials jurisdiction over European British-born subjects in criminal cases; because I feel that the previous speakers have ably and eloquently met, not only every possible objection that has hitherto been urged against this measure, but have, by incontrovertible facts and stern reasoning, established that it is a real necessity urgently called for to suit the exigencies of the improved and advanced circumstances of the country. At the time when the government of India was taken over directly by Her Most Gracious Majesty the Empress of India, a solemn pledge was given to the unrepresented millions of this land that the government of this country would be carried on without any distinction of creed or colour. The Proclamation then made forms the charter of our rights and liberties, and I say that the present Bill is one of the numerous other measures which are required to be carried out in order to secure for the natives of this country the full benefit and enjoyment of the rights and privileges vouchsafed to them by the highest authority in the realm. As it is getting late, and you are impatient to leave this hot room, I will conclude by saying, in the words of Edmund Burke, “that the House of Commons will have another and a very different duty to perform on this occasion. They will be bound not to suffer public opinion, which often prevents judgment and often defeats its effects, to be debauched and corrupted. Whenever the public mind is misled it becomes the duty of the Commons of Great Britain to give it a more proper tone and a juster way of thinking.” This sacred and responsible duty, the Commons of Great Britain will, we all trust and hope, fully and effectually discharge, if necessary, in the present case with regard to their countrymen in this land. With these remarks, gentlemen, I beg to second the adoption of the resolution.

On the motion of Mr. Lukhmidas Khimjee, seconded by Mr. Jairaj Peerbhoy, the meeting unanimously voted thanks to the Sheriff of Bombay for convening the meeting.

Mr. Dadabhoy Nowrojee, who was received with loud and prolonged cheers and the waving of hats and handkerchiefs, said:—Gentlemen, you must not expect a speech from me. (Loud cheers.) You have heard all that could be said from the previous speakers, who have treated the subject ably and exhaustively. My proposition now is simply this, that the Hon. Sir Jamsetjee Jeejeebhoy has presided to-day with so much ability that I think we ought to pass a cordial vote of thanks for his able conduct in the chair. (Loud cheers.)

The Hon. Rao Sahib V. N. Mundlick:—According to the usage of public meetings, as my friend, the Chairman, cannot put this proposition before you, I beg, with your kind indulgence, to do the same.

The proposition was then carried with acclamation.

No. 58.

MEMORIAL of the BRANCH INDIAN ASSOCIATION, KALNA
(dated 20th May 1883), to the Most Hon. the MARQUIS OF RIPON,
K.G., P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India
in Council.

The humble Memorial of the Committee of the Branch Indian Association at
Kalna, in the District of Bardwán—

MOST RESPECTFULLY SHOWETH,

1st. THAT your Excellency's humble petitioners are deeply grateful to your Excellency for the warm interest your Excellency takes in the real welfare of the natives of this country. Guided by the noble principle not to rule this vast Empire of Her Most Gracious Majesty the Queen-Empress of India by the sword, your Excellency has condescended to carry out strictly and literally the golden words of Her Imperial Majesty's proclamation of 1858.

2nd. That your memorialists cannot but thank you most cordially for your Excellency's most purely disinterested and highly laudable endeavours to destroy the invidious distinction between Natives and Europeans in the trial of criminal cases.

3rd. That your memorialists most warmly and sincerely support the Criminal Procedure Amendment Bill which your noble Excellency has recently introduced into the Council of the Governor General for making laws and regulations. They consider the above Bill as a just, wise, and righteous measure, calculated to remove a growing administrative inconvenience.

4th. That your memorialists beg most emphatically to contradict the totally unfounded and wrong statement of the opponents of the measure that the natives of this country do not crave for the boon your Excellency intends to confer upon them. They deem such a law as indispensably urgent, and sanguinely pray that your Excellency will pass it in due course.

5th. That your Excellency's memorialists are fully convinced that, by the light of the education vouchsafed to the natives of this country by the benign government of Her Majesty, many among them have become well qualified to hold the most honourable and responsible situations of the State. Some of them have, by their education, probity, and capacity, been deemed worthy to occupy seats on the Bench of the highest tribunals in India.

6th. That your Excellency's memorialists feel proud of those selected Natives who have acquitted themselves honourably in open and hard competition in England at the Covenanted Civil Service Examination, and, after successfully passing through the ordeal, have been fortunate enough to enter that service of which the most onerous duties they are discharging most creditably.

7th. Your memorialists therefore most respectfully pray that your Excellency will be pleased to pass the Criminal Procedure Amendment Bill into law, and they earnestly hope that the Almighty God will help your Excellency in the above noble act.

And your Excellency's petitioners, as in duty bound, shall ever pray.

In the name of the Branch Indian Association, Kalna.

(Signed) SHURESH CHANDRA SANYAL,
Secretary.

No. 59.

MEMORIAL of the SADHARAN HITA SHADHINI SABHA, DISTRICT PUBNA (dated 19th May 1883), to His Excellency the VICEROY AND GOVERNOR GENERAL IN COUNCIL.

The humble Memorial of the Sadharan Hita Shadhini Sabha of Tarash, in the District of Pubna, Bengal—

MOST RESPECTFULLY SHOWETH,—That your memorialists regard with feelings of deep satisfaction and thankfulness the proposed amendment to

the Criminal Procedure Code to remove the invidious distinction of race, religion, or colour in the trial of European British subjects in criminal cases.

That your memorialists are in full conviction that it is the noble principle of the British jurisprudence and polity to put aside all distinction in the eye of law which is the just pride of the British Government in India.

That, being assured of your Excellency's wise and liberal policy and of noble principles which actuate your Excellency in the government of this country, your memorialists are confident that the proposed amendment to the Criminal Procedure Code will come to effect with the entire satisfaction and heartfelt gratitude of the natives of India.

And your memorialists, as in duty bound, shall ever pray.

(Signed) SATIS CHANDRA RAY,
and 40 other members.

No. 60.

MEMORIAL of EUROPEAN BRITISH SUBJECTS OF SOUTHERN INDIA to His Excellency the Most Hon. the VICEROY AND GOVERNOR GENERAL OF INDIA IN COUNCIL.

The humble Petition of Her Majesty's European British Subjects in Southern India —

SHOWETH, that your memorialists are British-born subjects of Her Most Gracious Majesty the Queen-Empress of India, residing in that part of British India which is subject to the Governor and Council of the Presidency of Fort St. George and its dependencies, and possess by right of birth all the liberties of English freemen in the constitutional relations of the subject to the Crown.

2. That amongst the most ancient and most cherished liberties of Englishmen is the privilege reserved to them by Magna Charta, that the Sovereign shall not exercise judicial authority over a freeman of England "*nisi per legale iudicium parium suorum vel per legem terræ.*"

3. That your memorialists are entitled to the full benefit of these hereditary privileges, of which the accident of their residence in India should not in any way be permitted to deprive them.

4. That, from the date of the establishment of the British power in India, your memorialists have enjoyed these privileges; inasmuch as, by the laws in force in India, no European British subject could be arraigned for any offence whatsoever save before a justice of the peace (himself a British subject), nor could a British subject be tried for any offence involving any greater punishment than a fine before any tribunal except a judge of the High Court and a jury of his fellow citizens in the Presidency towns.

5. That, in the year 1869, an Act was passed by the Legislative Council of India authorising the various Local Governments to appoint "any persons" to act as justices of the peace within the towns of Calcutta, Madras, and Bombay; and that, under this Act, certain Natives have, since that year, been appointed magistrates of police and justices of the peace within the three Presidency towns, and have exercised jurisdiction over European British subjects, but only within the local limits of the said towns.

6. That a Bill has now been introduced into the Supreme Legislative Council of India, the object of which is to extend jurisdiction over European British subjects residing in India to all district magistrates and sessions judges and certain other magistrates of the first class, whether European or Native, and in any part of the country.

7. Your memorialists submit that the existence of Native magistrates possessing jurisdiction over Europeans within the Presidency towns affords no valid argument in favour of the extension of this jurisdiction to Native magistrates in the Mufassal. The Presidency magistrate exercises his functions in the midst of a numerous and vigilant European population, by whom any mistake on his part would be instantly detected. His court is frequented by the reporters of the daily press. It is thronged with legal practitioners, and a European magistrate sits in the adjoining room. All

these conditions would be wanting in the case of a Native magistrate exercising jurisdiction over a European in the Mufassal.

8. That your memorialists are justified by the past in fearing that the infringement of their hereditary rights, now contemplated, cannot long remain limited to the class of magistrates to whom it is now proposed to entrust enlarged powers. The same reason which has been adduced as necessitating the grant of jurisdiction over European British subjects to Native magistrates of the first class can equally, and your memorialists doubt not will in time, if this Bill be passed, be applied to all classes of magistrates; and similar arguments will be urged for an extension of the jurisdiction thus granted to Native magistrates, until it may come to pass that Europeans may hereafter find themselves subject to the penalty of death at the hands of a Native sessions judge in the Mufassal.

9. That the only reason adduced for depriving your memorialists of their hereditary right of being tried by one of their own race is that this privilege constitutes an invidious distinction between European and Native British subjects. It is admitted that, in practice, the privilege has not operated to the prejudice of the administration of justice throughout the Indian empire.

10. That your memorialists regard with anxiety and alarm this attempt to deprive them of rights which they and their predecessors in this country have enjoyed since the foundation of British rule in India.

11. That the existing distinction between European and Native British subjects, which is now termed invidious, is entirely consonant with the invariable custom of the British Government to recognise and respect all the peculiar privileges and customs of the numerous different races which compose the population of this empire. Your memorialists may be allowed to cite, as one example, the privilege accorded to that section of the population which preserves the custom of secluding its female members from appearance in public. In their case, the Government has provided that such female members shall be exempted from the ordinary processes of law which secure the attendance of any member of the community to give evidence in courts of justice. Your memorialists may further cite the special privileges conceded to Brahmans when subjected to imprisonment in the jails of the country. In order to preserve their caste privileges, such Brahmans are allowed special arrangements for the preparation of their food, and for other observances connected with their caste customs, and are further exempted from such forms of labour as would be contrary to their caste prejudices; although the offences for which they have been sentenced may be of a class for which the law has provided the penalty of imprisonment with hard labour as ordinarily exacted. Such concessions, of which many other instances could be given, are manifestly a recognition of distinctions between one class of the population and another.

12. Your memorialists therefore contend that, in claiming for European British subjects the continuance of the special privilege of being tried by men of their own race, they ask no more than is daily conceded in various ways to other races in India; and therefore that the charge of invidiousness is not fairly applicable to the distinction which your memorialists seek to preserve. So long as differences of race and social customs are recognised and observed by the Government of India, your memorialists may fairly claim that this special privilege, to which their class attaches peculiar importance, should, in equity, be also observed.

13. That your memorialists have further good reason for deprecating the proposed alteration in the law. Your memorialists are most anxious to avoid any remarks which may appear to disparage the capacity or integrity of their Native fellow subjects; but it is impossible to overlook the fact that the social customs and the domestic life of natives of India are widely dissimilar from those of Europeans; that few Natives, especially in the Mufassal, can have any opportunity of assimilating European forms of thought, or of acquiring any accurate idea of the customs and daily life of Englishmen, and their powers of observation, examination, and judgment must be in great measure influenced by the customs and prejudices of their special castes; and that, for these and many other reasons, the Native cannot be held to possess such common interest with the European as is contemplated by the

legal maxim that an Englishman is entitled to trial by the judgment "*parium suorum*," and is therefore unfitted to exercise judicial authority over the Englishman.

14. Your memorialists would further point out that, owing to the presence of numerous missionaries scattered throughout Southern India, some, and possibly many, of the cases affecting Europeans, which, if the proposed Bill become law, will fall to be tried by Native magistrates, must be cases concerning to a greater or less extent the religious prejudices of the Natives. They submit that it would be a very doubtful boon to any Native magistrate to require him to try a case in which he cannot be a disinterested arbiter; where, even if he can succeed in divesting himself of the prejudices of hereditary descent, early training, and daily custom, he must be aware that, if his honest decision be opposed to the social prejudices of his caste fellows, his verdict will inevitably imperil his social comfort for the rest of his life.

15. Your memorialists are also reluctantly compelled to refer to the very prevalent custom in India of preferring false charges. No judge who has ever sat upon the Bench in India will deny that false charges and false evidence are matters of daily occurrence in Indian courts. Your memorialists cannot but fear that to deprive them of the right of being tried by their countrymen will be but an invitation to the ill-disposed to practise against Europeans the same custom of malicious accusation which the natives of this country so commonly practise against each other. Even under the existing law such cases have occurred, and charges affecting the lives of Englishmen have only broken down under the searching investigation of an English Bench and an English Bar.

16. That, although the numerical strength of your memorialists is not great when compared with the teeming masses of the other races in British India, it yet remains an undisputed fact that your memorialists represent, almost exclusively, the most progressive arts and manufactures in Southern India, as well as a very large proportion of the capital employed in commerce, planting, and other industries.

17. That the removal of the prerogative of race would also remove the principal source of the confidence with which European British subjects have acted as pioneers of civilisation, and braved the dangers of a residence in outlying regions, where they were either altogether isolated or members of a numerically feeble community.

With the destruction of the bulwark of their liberty, the subordinate ranks of European British subjects in India will no longer be prepared to run the risks of residence in lonely places, where they, their wives and their children, will labour under all the disadvantages of the alien, without the one compensating advantage which they have hitherto enjoyed.

18. That the inevitable consequence of such a change in the condition of European subordinate employes in India will be the withdrawal from the empire of much European capital and a severe check to the progress of the material prosperity of the empire.

Your memorialists therefore pray—

- (1) That this their memorial may be received.
- (2) That your memorialists may not be deprived of any of the liberties enjoyed by English freemen under Magna Charta.
- (3) That, if uniformity of legislation be considered so great a necessity, such uniformity may be attained by repealing the anomaly created by Act II. of 1869, whereby the appointment of Natives to exercise jurisdiction over Europeans in the Presidency towns is authorised.
- (4) That the progress of reform in India and the improvement and development of her resources may not be impeded and jeopardised by proposals for legislation of a character calculated to create antagonism of races, or by sudden and subversive changes in the laws.

And your memorialists, as in duty bound, will ever pray.

(Signed) A. MACKENZIE, and 2,451 others.

No. 61.

LETTER from the PRESIDENT, HITCHINTAK SABHA, VINGORLA,
to SECRETARY TO GOVERNMENT OF INDIA, LEGISLATIVE
DEPARTMENT. (No. 45, dated 26th May 1883.)

I HAVE the honour to forward a memorial to his Excellency the
Viceroy in Council from the Native inhabitants of Vingorla in favour of the
Jurisdiction Bill, and request You to place it before his Excellency in
Council.

I have, &c.,
(Signed) F. CURSETJEE, *Engineer*.

MEMORIAL of NATIVE INHABITANTS OF VINGORLA (No. 44, dated 13th May
1883) to His Excellency the Right Hon. GEORGE FREDERICK SAMUEL,
MARQUIS OF RIPON, K.G., P.C., G.M.S.I., G.M.I.E., Viceroy and
Governor General of India;—referred to in preceding letter.

May it please your Excellency,—We, the undersigned humble
petitioners, Native inhabitants of Vingorla, Bombay Presidency, have the
honour to submit the following few lines to your Excellency's attention in
the hope of getting what we pray for therein.

We humbly trust your Excellency in Council will pass the Jurisdiction
Bill in the interest of the country which is introduced into your Excellency's
Legislative Council by the Hon. Mr. Ilbert. This much-needed measure will
not, we trust, be given up owing to the unfounded charge brought against
your Excellency's Government by the opponents. We are sure that your
Excellency, instead of yielding to misrepresentation, will remain steadfast
to your purpose against all the opponents.

We are very much obliged to your Excellency for governing the country
wisely, impartially, and in a manner to give happiness to us, the ever-unfor-
tunate Hindús. Ever since your Excellency took up the reins of the
government of India this country has been advancing in peace and
prosperity.

We are quite sure that your Excellency's mind will not be prejudiced in
respect to the Bill, though the opponents of the Bill bring serious charges
against it. We know not the cause of some of the Europeans in India being
soured against your Excellency's administration. They attach that blame
to your Excellency, we think, from notions of their own superiority; that is
to say, they cannot bear us to have authority over them, and so, for taking
our side, they blame your Excellency. We think that it would not be just
to do away with this Bill now when it has obtained the public approval.
Their very thoughts, expressed in some newspapers, tell us that their
opposition only arises from mere self-interest. They are unmindful of others'
good, and in particular of that of the Hindús, whom they think of no
account at all. We don't think—and not only we, but none would think—
that it would cause any harm to them to confer the right stated in that Bill
upon qualified Hindú officers.

After all, we have nothing more to say than to entreat your Excellency to
go by the just way, and to carry that Bill into execution as soon as possible.

The British power in India must be founded on the affection and the
gratitude of the people of the country. Whatever short-sighted and in-
terested partisans, led away by ignorance and prejudice, may say to the
contrary, there is no doubt that English statesmen, with acute political
vision and foresight, recognise this fact, and honestly strive to adapt their
policy to the altered condition of the country.

The above-stated assembly hopes warmly that this memorial shall be for-
warded to Parliament.

For which act of kindness we shall, in duty bound, ever pray and oblige.

Hoping every success to your Lordship's efforts,

(Signed) F. CURSETJEE, *Engineer*,
and 557 others.

No. 62.

LETTER from the SECRETARY, INDIAN TEA ASSOCIATION, to
SECRETARY TO GOVERNMENT OF INDIA, Legislative Department.

Dated 4th June 1883.

I AM desired to hand you, for the information of his Excellency the Viceroy and Governor General of India in Council, the accompanying copies of the memorial of the Indian Tea Districts Association, London, to the Right Honourable the Secretary of State for India, with reference to the proposed amendment of the Code of Criminal Procedure.

I have, &c.,
(Signed) G. M. BARTON.

MEMORIAL of INDIAN TEA DISTRICTS ASSOCIATION, dated London, April 1883, to the Right Hon. the EARL OF KIMBERLEY, Her Majesty's Secretary of State for India.

THE memorial of the Indian Tea Districts Association—

SHEWETH,—That your memorialists, interested in the important and increasing tea-growing industry of India, giving employment to a large number of European managers and assistants, more or less dispersed and isolated in the interior of the country, view with alarm and distrust the proposed amendment of the Criminal Procedure Code, by which, if passed, Europeans will be brought under the criminal jurisdiction of Native magistrates and judges.

That this abrogation of a much valued privilege is not proposed in response to any demand on the part of the people of India, but would appear to be dictated by no higher political considerations than the removal of a seeming legislative anomaly, and a questionable addition to administrative convenience.

That no grounds of urgency have been shown for the removal of this anomaly from a body of laws interlaced with social customs, literally bristling with anomalies and exemptions in favour of the Natives, just as the entire structure of our dominion and Government of India rests on anomalies and race-distinctions seemingly adverse to them, but in reality as indispensable to their welfare as to the continuance of our rule.

That the plea of administrative inconvenience of the law as it exists has been shown by the Lieutenant-Governor of Bengal, and other high authorities, to be either entirely groundless or insignificant in comparison with the wider issues raised.

That the removal of what may seem an invidious race-distinction may commend itself to the advocates of the amendment as being logically consistent, and in harmony with a policy of conciliation and encouragement of the Native races; but logical consistency in this sense, if rigidly followed, would lead to the abdication of our position as the governing race; and there is undeniably a wide field opened for the exercise of such a policy without the surrender of the vital principle involved in this amendment,—a surrender emphatically condemned by an overwhelming consensus of enlightened opinion as being premature and dangerous.

That many of your memorialists have spent the best years of their lives in India, some of them in high administrative positions in the service of the Government, others in commercial and industrial pursuits, and have thus had ample opportunities of judging whether such a law as that now proposed, if passed, will tend to a more impartial and effectual administration of justice.

That while not denying to the Natives of India the possession of many excellent characteristics, your memorialists consider that, in their present stage of social and moral development, it would be unsafe and impolitic to entrust them with the power of exercising criminal jurisdiction over Europeans.

That while it has been said by the advocates of the measure that it would be applied tentatively and under certain tests, educational and otherwise, there can be little doubt that all such tests would prove more or less illusory, and that sooner or later the functions would come to be exercised by any and all Natives occupying the position of magistrate or judge.

That the fact of such precautions being deemed necessary is a tacit admission of the danger attending this legislative experiment, and of the uncertain ground on which the Government is venturing.

That only those who have resided long enough in the interior of India to become acquainted with the peculiarities of the Native character can understand the facility, and apparent completeness, with which a trumped-up criminal charge, dictated by motives of malice or greed, could be brought against a European, isolated from his countrymen, without the safeguards of the bar, the press and an educated public opinion, and having only Natives to rely upon for support and legal assistance. The issues involved in such a case are momentous,—no less so than the personal liberty and honour of the man or woman, as the case may be; and to the man the probable shipwreck of his career in life, and serious, if not irremediable, injury to valuable interests dependent on his personal supervision; to the woman a degradation the possible nature and scope of which can be readily conceived by any one conversant with the habits and customs of the East.

That the tribunal trying such a case would require not only to be such as to command confidence in its technical ability and integrity, but also to be sufficiently in sympathy with the race and class of the person on trial to be able to discern the inherent probability of guilt or innocence. It is in this respect that a Native judge, who might be otherwise of unimpeachable fitness, would be most likely to fail; and, in fact, Europeans whose conduct has brought them fairly within the action of the Criminal Court will be as likely to escape the just penalty of their guilt as the innocent to incur an unmerited punishment.

That the grave objections, moral and material, to this measure may be summed up as follows :—

1. A revival of race-jealousy and further mutual alienation of the interests and sympathies of the European and Native elements of the population.
2. An increased temptation to resort to false and vexatious charges against Europeans, with consequent danger to their liberty and property.
3. A check to the influx of European capital, and to the expansion of commercial and industrial enterprise, arising from the absence of the essential conditions of security.
4. A consequent prejudicial effect on the general prosperity of the country and the revenues of the State.

Under this aspect of the question we may be allowed to refer to the immense impetus that has been given in recent years to the prosperity of India by means of European capital and enterprise.

The tea-industry of India alone represents an investment of capital of not less than fifteen millions sterling, and an annual disbursement, in wages and otherwise, in connection with the investment, of about two and a half millions sterling. The revenues derived from the various provinces and districts in which the industry is prosecuted show a marked and progressive increase, clearly denoting the operation of cause and effect. This is but an example of what is taking place with various degrees of industrial activity throughout the country, and it is obviously the interest of Government to foster by every legitimate means a spirit of private enterprise so well calculated to promote these objects, and to refrain from legislation which would have a deterrent effect.

Your memorialists therefore pray that your Lordship will be pleased to withhold your assent to a Bill, not shown to be required in the abstract interests of justice, which will be otherwise highly injurious in its operation and is opposed and deprecated by those who would be amenable to its incidence with a manifestation of public feeling and unanimity which it would be unwise to ignore, and which should alone suffice to induce the withdrawal of the measure.

And your memorialists will ever pray, &c.

T. D. FORSYTH, <i>Chairman,</i>	} <i>Indian Tea District Association.</i>
H. HOPKINSON, <i>Vice-Chairman,</i>	
R. H. KEATINGE, <i>Vice-Chairman,</i>	

No. 63.

LETTER from the PROPRIETOR, DUMLOTE TEA ESTATE, Kumaon, to
SECRETARY TO GOVERNMENT OF INDIA, Home Department.

Dated 26th May 1883.

I HAVE the honour to enclose, for presentation to his Excellency the Viceroy in Council, the accompanying memorial of the tea-planters and landed proprietors, residents in Kumaon and Garhwal, North-west Provinces of India.

I have, &c.,
(Signed) R. M. DALZELL.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

MEMORIAL of TEA-PLANTERS, LANDOWNERS, and RESIDENTS in KUMAON and GARHWAL to his EXCELLENCY the Most Noble the MARQUIS OF RIPON, K.G.P.C., G.M.S.I., G.M.I.E., Viceroy and Governor General of India in Council.

THE memorial of the undersigned Tea-planters, Landowners, and Residents in Kumaon and Garhwal, North-west Provinces of India—

SHEWETH,—That in the matter of the Bill now before the Legislative Council of the Government of India, entitled the Criminal Procedure Code Amendment Act, they consider it is uncalled for and unnecessary for the following reasons:—

- 1st.—Because it is in direct antagonism to the wishes and desires of those most interested in it, namely, the great body of the British residents in India.
- 2nd.—It is calculated still further to widen the undesirable breach that already exists between the Christian and heathen subjects of Her Majesty the Queen and Empress of India.
- 3rd.—In the opinion of your memorialists, such legislative measures, having for their object the further extension of Native jurisdiction in this country, will, if thoroughly tested by the voice of the Natives themselves, be found contrary to the wishes of the bulk of the inhabitants of India, who, so far from desiring an increase of Native officials or of Native jurisdiction over Europeans in the administration of law and justice, would hail with heartfelt satisfaction an increase of British officials in the said administration of law and justice; and this your memorialists believe would be abundantly verified by an appeal to the Natives of India themselves.
- 4th.—Your memorialists beg therefore most respectfully to urge that the said Bill, the Criminal Procedure Code Amendment Act, may not be passed into law.

(Signed) R. M. DALZELL, and 21 others.

ENDORSEMENT by OFFICIATING UNDER SECRETARY TO GOVERNMENT OF INDIA, Home Department (No. 809 dated 6th June 1883).

TRANSFERRED to the Legislative Department for disposal.

(Signed) G. S. FORBES.

No. 64.

LETTER from the CHIEF SECRETARY TO GOVERNMENT, Bombay,
to SECRETARY TO GOVERNMENT OF INDIA, Legislative Department.

No. 3855, dated 8th June 1883.

IN continuation of my letter No. 3731,* dated the 2nd instant, I am directed to forward, for the information of the Government of India, copy of a letter from the Secretary to the Millowners Association, Bombay, dated the 22nd ultimo, communicating the opinion of the Association on the provisions of the Bill for amending the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

I have, &c.,
(Signed) C. GÖNNE.

LETTER from the SECRETARY, BOMBAY MILLOWNERS ASSOCIATION, to
UNDER SECRETARY TO GOVERNMENT, Bombay (dated 22nd May 1883);
—referred to in preceding Letter.

I AM directed to acknowledge the receipt of your letter No. 2261, dated 2nd April 1883, forwarding copies of a letter from the Secretary to the Government of India, Legislative Department, No. 24C., dated the 17th March 1883, and of a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, together with the Statement of Objects and Reasons which accompanied it, and requesting that Government might be favoured with the opinion of the Millowners Association on the provisions of the Bill.

These documents were submitted to a General Meeting of the Association held on the 9th instant, when the following resolution was carried, the only Europeans (two) who were present, and who were members of the same firm, dissenting:—

“That the Committee be requested to inform Government, in reply to their letter dated 2nd April 1883 that the Association approves of the provisions of the Bill to amend the Code of Criminal Procedure, 1882.”

(Signed) J. GORDON.

No. 65.

LETTER from the SECRETARY TO GOVERNMENT, BENGAL, to
SECRETARY TO GOVERNMENT OF INDIA, Legislative Department, No. 898 J. D.

Dated 4th June 1883.

I AM directed to submit the accompanying copy of a letter, No. 68, dated the 22nd ultimo, from the Honorary Secretaries, European and Anglo-Indian Defence Association, and its enclosure, in original, being a protest from the non-official European residents of the districts of Jessore, Nuddea, and Pubna against the Bill to amend the Code of Criminal Procedure.

I have, &c.,
(Signed) F. B. PEACOCK.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

LETTER from the HONORARY SECRETARIES, EUROPEAN AND ANGLO-INDIAN
DEFENCE ASSOCIATION, to OFFICIATING SECRETARY TO GOVERNMENT,
Bengal, No. 68.

Dated 22nd May 1883.

WE are directed by the Council of the above Association to forward herewith, in original, a protest from the non-official European residents in the

districts of Jessore, Nuddea, and Pubna, in Lower Bengal, on the subject of the Criminal Procedure Code Amendment Bill, and to request that you will forward it through the proper channel to his Excellency the Viceroy and Governor General of India in Council.

(Signed) A. FURRELL,
J. S. E. J. CLARKE.

PROTEST from the NON-OFFICIAL EUROPEAN RESIDENTS in the DISTRICTS of JESSORE, NUDDEA, and PUBNA, LOWER BENGAL.

WE, the undersigned non-official European residents in the districts of Jessore, Nuddea, and Pubna, hereby give our most emphatic protest against the proposed change in the Criminal Procedure Code, whereby we are to lose the privileges we have hitherto enjoyed, and are to be made amenable to the jurisdiction of Natives. That we view any such change with the greatest anxiety and alarm, knowing, as we do, the great dangers which such might lead to; and, in districts like these, where Europeans are so isolated and so few in number, we consider it specially dangerous and fraught with ruin for us in every way. We resolve that one of our number should forward this our firm and indignant protest to the Commissioner of the Presidency Division, with the request that he will bring the same through the proper channel before his Excellency the Viceroy, in the assurance that Lord Ripon will not permit those privileges which we cherish so much, that (*sic*) of being tried by our peers, to be taken from us.

(Signed) W. SHIRREFF, and 48 others.

No. 66.

MEMORIAL of Anglo-Indian and European British subjects of Jaunpore is, *mutatis mutandis*, identical with that from Mirzapur printed as Paper No. 33 relating to the Bill, and is not printed in this Collection.

No. 67.

LETTER from the SECRETARY to GOVERNMENT, Bengal, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 1159J.D.).

Dated 15th June 1883.

I AM directed to submit the accompanying copy of a letter* from the Honorary Secretary, European and Anglo-Indian

* Dated the 9th instant. Defence Association, with its enclosure in original, being a memorial addressed to his Excellency the Governor General in Council by certain European British subjects and others residing in India, in connexion with the Bill to amend the Code of Criminal Procedure.

I have, &c.,
(Signed) F. B. PEACOCK.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

LETTER from the HONORARY SECRETARY, EUROPEAN and ANGLO-INDIAN DEFENCE ASSOCIATION, to SECRETARY to GOVERNMENT, Bengal (No. 72).

Dated 9th June 1883.

ON behalf of the European and Anglo-Indian Defence Association, I beg to forward, for submission to his Excellency the Viceroy, the accompanying

memorial of certain European British subjects and others residing in India against the Criminal Procedure Code Amendment Bill.

The memorial bears 11,783 signatures.

I have, &c.,
(Signed) J. W. FURRELL.

MEMORIAL of certain EUROPEAN BRITISH SUBJECTS of INDIA, dated 9th June 1883, to his Excellency the VICEROY and GOVERNOR GENERAL in COUNCIL.

THE humble memorial of the undersigned European British subjects and others, resident in India—

RESPECTFULLY SHEWETH,—That by the existing law for the administration of criminal justice in British India, European British subjects charged with the commission, without the local limits of jurisdiction of the High Courts of Judicature of Bengal, Madras, Bombay, and Allahabad, and of the Chief Court of Judicature of the Punjab, of offences against the criminal law, are entitled to be tried on such charges in the above-named High Courts or Chief Court, in case of offences punishable with death or transportation for life, and by European judges and magistrates in case of offences not so punishable; subject, nevertheless, to the proviso that such magistrates shall not have power to sentence European British offenders to imprisonment exceeding three months, and that such judges shall not have power to sentence them to imprisonment exceeding one year, but that they shall transfer to the High Courts for trial all cases in which they consider one year's imprisonment to be an inadequate punishment.

2. The right of British subjects in India to be tried by judges being themselves European British subjects is not of recent introduction, but coeval with the establishment in this country of British courts of criminal judicature; criminal jurisdiction over all persons subject to their rule was conferred by the Charters of 1661 and 1669 on the Governors and Councils of Madras, Bengal, and Bombay, who were constituted Courts of Oyer and Terminer, and the territorial limits of whose jurisdiction were defined by the Charters of 1726 and 1753. The jurisdiction of the Governors' courts was transferred, in Bengal, to the Supreme Court at Fort William, established in 1774 under Statute 13 Geo. III., c. 63, with criminal jurisdiction over all British subjects in Bengal, Bihâr, and Orissa, and in Madras and Bombay, to the Records' Courts established in those towns in 1797 under Statute 37 Geo. III., c. 142, with criminal jurisdiction over all British subjects residing within the factories subject to, or dependent upon, the Governments of those provinces. The last-mentioned courts were themselves replaced by, and their criminal jurisdiction over British subjects was vested in, the Supreme Courts established at Madras in 1801, and at Bombay in 1823, under the Statutes 39 & 40 Geo. III., c. 79, and 4 Geo. IV., c. 71, respectively.

3. The criminal jurisdiction over British subjects of these several courts, whose judges were themselves British subjects, was extended by various enactments to the new territories acquired from time to time by the East India Company.

4. The Charter of 1726 and the Acts and Charters under which the Supreme Courts were created constituted the Governors and Councils of Madras, Bengal, and Bombay, the Governor General and the members of his council, and the judges of the Supreme Courts, justices of the peace; but as these provisions were found insufficient for the due administration of justice, in regard to offences committed by British subjects at a distance from the presidency-towns, and in order to facilitate the commitment of such offenders for trial, the Statute 33 Geo. III., c. 52, empowered the Governor General in Council to appoint justices of the peace "from the covenanted servants of the East India Company, or other British inhabitants," to act within the provinces and presidencies of Bengal, Madras, and Bombay, and places subordinate thereto, and a later Statute, 47 Geo. III., c. 68, conferred on the Governors in Council of Madras and Bombay similar powers within

their respective presidencies in supersession to that extent of the above-mentioned powers of the Governor General in Council, but with the like restrictions as to the persons who might be appointed to act as justices of the peace outside the presidency-towns. The powers thus conferred have been confirmed and extended to the Local Governments established in India since the dates of these Statutes by various Acts of the Indian legislature, the last of which, being the existing Code of Criminal Procedure, was passed on the 6th of March 1882. Every one of these Acts prescribed that only European British subjects should be appointed justices of the peace outside the presidency-towns. Native members of the covenanted civil service have, it is true, been appointed justices of the peace in pursuance of powers supposed to be given by Act II. of 1869, but such appointments, your memorialists submit, are in violation of the express language of the Act identical in this respect with the words of the Statutes above mentioned, and which clearly indicates that the civil servants appointed thereunder shall themselves be British inhabitants. Down to the 6th of March 1882, therefore, the Indian legislature fully recognised the inexpediency, to use no stronger expression, of conferring on Natives outside the Presidency-towns even so limited a jurisdiction as that of committing European British subjects for trial. In the presidency-towns, where such powers were exercised under the direct supervision of the British Government and the watchful control of a large European community, where the Supreme Court was a criminal Court of Oyer and Terminer and where immediate redress for a wrongful commitment was obtainable, the same necessity for Native disqualification did not appear to exist; and accordingly the Statute 2 & 3 Wm. IV., c. 71, authorised the appointment, as justices of the peace for such towns, of any persons resident within the Company's territories without distinction of race. Considerations of a similar character seem to have prevailed in the occasional appointment of Natives of India to the magistracy of the presidency-towns. Such appointments, however, have by no means proved a success, even in Calcutta. One of the first Native presidency magistrates, appointed in 1856, was dismissed or removed for gross judicial misconduct in 1858. No Native was in consequence appointed for twenty-one years afterwards; and although within the last few years Natives have been again appointed, yet the Bengali magistrates have in many respects failed to discharge their duties as satisfactorily in public opinion as the European British incumbents of the office.

5. The criminal jurisdiction of the Supreme Court over European subjects was transferred to the High Courts established at Calcutta, Madras, and Bombay in 1862, and at Agra in 1865, under the Statutes 24 & 25 Vict., c. 104, and 28 Vict., c. 15, and, as regards the Punjab, to the Chief Court of that province created by Act IV. of 1866. Natives of India are made eligible to the benches of these several Courts. But the policy of their appointment is in some measure safe-guarded by the fact that the judicial duties of such Native judges are discharged subject to the immediate control of their British colleagues, the check of a large, independent, and vigilant bar, the criticism of an able and enlightened European press, and the powerful influence of the collective educated opinion of the numerous British residents in the presidency-towns.

Moreover, no Native judge has hitherto sat in any of the High Courts singly to exercise original criminal jurisdiction over Europeans, but Native judges have only sat as members of a Court of Appeal with European colleagues. Under Act XXI. of 1863, a Recorder's court was established at Rangoon with criminal jurisdiction over European British subjects in British Burma in respect of all offences not punishable with death, jurisdiction in the case of capital offences being reserved to the Calcutta High Court. The only statutory qualification for the recorder's office is that the judge must be a barrister of not less than five years' standing. It must be remembered, however, that, when this Act was passed, there was no Native barrister in India, and only one practising in England. No Native, as a matter of fact, has ever been appointed recorder, and your memorialists submit that it was not in the contemplation of the legislature that such an appointment ever could be made, and that, therefore, no special provision was deemed necessary.

6. The exclusive criminal jurisdiction over British subjects of the courts established by Royal Charter continued till 1812, when the Statute 53 Geo. III., c. 155, empowered Zilla magistrates (who were justices of the peace and therefore Europeans) to try British subjects for petty assaults or injuries accompanied with force committed on Natives at a distance from the presidency-towns, and to punish such offenders, by fine not exceeding Rs. 500, or, in default of payment of the fine, by simple imprisonment for a period not exceeding two months. The criminal jurisdiction of the Company's courts over European British subjects outside the presidency-towns was never further extended.

7. On the 24th of January 1857, Mr. (now Sir) Barnes Peacock, then legal member of the Legislative Council of the Governor General, moved the first reading of four Bills (framed by the Indian Law Commissioners appointed under the Statute 3 & 4 Wm. IV., c. 85) "for extending the jurisdiction of the Courts of criminal jurisdiction of the East India Company in Bengal, Madras, Bombay, and the North-western Provinces, for simplifying the procedure thereof, and for investing other Courts with criminal jurisdiction." These Bills provided that no person whatever should, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the criminal courts. The Select Committee, however, to whom these Bills were referred for consideration, were of opinion that the jurisdiction of the Mufassal courts in regard to the trial of European British subjects ought not to be extended, an opinion in which the majority of the council concurred. But the council went still further, and, on the 3rd of September 1859, at the instance of Mr. Peacock himself, inserted a clause which provided that "no person should be empowered by Government to hold a preliminary inquiry into cases triable by any of the Supreme Courts of Judicature, or to arrest, hold to bail, or commit any European British subject, unless the person so authorised be a covenanted servant of Government or a European British subject." It must be borne in mind that no Native of India had at that time been admitted as a covenanted servant of Government; the result, therefore, of this clause was to exclude Natives from all criminal jurisdiction over European British subjects. In consequence of the enactment of the Indian Penal Code, it became necessary to refer these Bills back to another Select Committee, but the principle of Native disqualification, which had been thus deliberately adopted, was in no wise abandoned in the measure which was ultimately passed into law as Act XXV. of 1861. The criminal jurisdiction as regards European British subjects of the courts established by Royal Charter was left untouched by this Act, and, save so far as it was affected by the creation of the Recorder's court at Rangoon and of the Chief Court of the Punjab; that jurisdiction continued unchanged till 1872.

8. On the 17th of December 1870, a Bill to consolidate and amend the law relating to the procedure of criminal courts of judicature now established by Royal Charter was introduced into the Legislative Council of India by Mr. J. F. Stephen, then legal member of Council, and was referred to a Select Committee. This Bill, as originally framed, did not touch the jurisdiction of the Charter courts. On the 16th of December 1871, Mr. Stephen informed the Council that "the Select Committee have received a large number of opinions from the Local Governments and persons connected with the administration of justice in reference to the Bill, and amongst others they had received a most important paper from the Government of Bengal. That paper contained a suggestion that European British subjects should be made to a great degree amenable to the ordinary criminal courts of the country." A reference to the paper alluded to shows that the Bengal Government advocated such an extension of jurisdiction to the Mufassal courts on the express ground that these courts were presided over by British officers. Upon a consideration of the suggestion so made, the Select Committee, after informally ascertaining the feeling of the non-official classes, recommended, with respect to the jurisdiction over European British subjects,—

"(a) The extension of the jurisdiction of magistrates being justices of the peace, and, in the case of Mufassal magistrates, European British subjects,

to try European British subjects for offences which would be adequately punished by three months' imprisonment or fine of Rs. 1,000.

"(b) That sessions judges, being European British subjects, should be empowered to pass sentence on European British subjects of one year or fine, but that, in case of European British subjects pleading guilty or accepting the Sessions judge's jurisdiction, the court might pass any sentence provided by law for the offence in question.

"(c) That a European British subject convicted by a justice of the peace or a magistrate should have the right of appeal either to the Court of Sessions or the High Court at his option.

"(d) That, in every case in which a European is in custody, he may apply to the High Court for a writ of *habeas corpus*, and the High Court shall thereupon examine the legality of his confinement and pass such orders as it thinks fit."

9. On the consideration by the Council of the Select Committee's report, Sir Barrow Ellis moved that jurisdiction over European British subjects should be conferred on Native magistrates of the first class being justices of the peace (that is to say, Native members of the covenanted civil service who had been admitted by competition in England, and whom he thought sufficiently Europeanised to be treated as Europeans); but the motion was negatived on a division of the Council after full and deliberate discussion, and the Bill modified according to the recommendations of the Select Committee, was passed on the 25th day of April 1872, as Act X. of that year. The proposal to invest Native magistrates with criminal jurisdiction over European British subjects evoked on every occasion strong opposition from the non-official European community; and the question of conferring such jurisdiction was not again raised in Council until the present year, notwithstanding the pregnant fact that Act X. of 1872 was passed (? amended) in 1874, and that the whole law relating to the jurisdiction and procedure of the criminal courts in India (including the courts established by Royal Charter) was remoulded by Act. X of 1882. This last measure was framed on consultation with all the Local Governments in India, and professed to embody the ripe conclusions of ten years' deliberation. While it was pending before the Legislative Council, officials interested in the administration of criminal law were invited, to criticise and report upon it, and upwards of one hundred and fifty reports from officials, among whom were a number of Natives, besides criticisms from the different Local Governments, were received in answer to that invitation. Among these were fifteen reports from High Court judges, thirty-two from Sessions, additional and assistant Sessions judges, fifty-seven from district magistrates, four from presidency magistrates, thirty-two from Commissioners of Divisions, seven from Judicial commissioners, six from Chief Commissioners, five from Inspectors General of Police, besides others from Deputy and Assistant Commissioners of Police, Small Cause Court judges, munsifs, residents in Native states and law officers of Government. Not one of these reports or criticisms, so far as your memorialists have been able to ascertain, except one dated the 9th September 1879, from the then officiating Chief Magistrate of Calcutta, a Native not belonging to the covenanted civil service, advocated the abolition of the existing rights and privileges of European British subjects. With these reports and criticisms before the Legislative Council, it was deliberately resolved in 1882 that it was neither just nor expedient that European British subjects should be rendered liable to the exercise of criminal jurisdiction by Native magistrates outside the presidency-towns.

10. Notwithstanding the fact that Act X. of 1882, which purported to deal exhaustively with the amendment of the Criminal Procedure Code, came into force only on the 1st of January 1883, yet on the 9th of February 1883, a Bill to confer criminal jurisdiction over European British subjects without the presidency-towns upon Native magistrates and judges being members of the covenanted civil service of India or of the Native civil service constituted under Statute 33 Vict., c. 3, or being uncovenanted Sessions judges, or uncovenanted assistant commissioners or cantonment magistrates, was introduced by the legal member, Mr. Ilbert, into your Excellency's Council and is now under consideration by that Council.

11. That, from the discussions which have already taken place in such Council on the said Bill, and from the published official papers relating thereto, it appears that sanction was obtained for the introduction of the Bill from the Secretary of State for India in Council, and that confidential opinions had been obtained from the Local Governments in favour of some criminal jurisdiction over European British subjects being conferred on Native members of the covenanted civil service. It further appears that the Chief Commissioner of Coorg and the two senior members out of the four who compose the Madras Council are opposed to such a measure, and that the Government of Bengal was not consulted on the subject; such omission being justified as in accordance with ordinary practice, the measure having originated in a suggestion made by Sir Ashley Eden, the late Lieutenant-Governor, shortly before his departure from India. In view of the fact that the European population of Bengal far exceeds that of any other presidency, it is, your memorialists venture to think, to be regretted that, before the introduction of so important a Bill, steps were not taken to ascertain the opinion of the present Lieutenant-Governor of Bengal and his judicial and magisterial officers, and also the opinions of the Chief Justice and puisne judges of the High Court of Bengal. It is, your memorialists feel, matter for yet graver regret that no endeavour was made to ascertain the opinions and sentiments of the non-official European community, who were to be specially and peculiarly affected by the provisions of the Bill, with regard to a measure the principle of which that community had on all previous occasions condemned, and the re-introduction of which has led to a strong and general agitation and awakened profound feelings of indignation and distrust.

12. The effect of this Bill is to disqualify all Europeans not in the covenanted civil service and not being assistant commissioners or cantonment magistrates from being justices of the peace, that is, from trying or committing Europeans, and to render eligible in their place (a) Native members of the covenanted civil service chosen by competition in England (of whom there are only nine in all India); (b) members of the new Native civil service nominated in India without competition and without going to England; (c) Native uncovenanted district judges; (d) Native uncovenanted assistant commissioners; and (e) Native cantonment magistrates (should any such be appointed).

13. Your memorialists should observe that there is no statutory qualification for the office of assistant commissioner or cantonment magistrate, and nothing to prevent such offices from being filled entirely by Natives who are not covenanted civil servants; that almost all the tea grown in India is grown in districts under the criminal jurisdiction of assistant commissioners; and that there are more than one hundred of such officials in India.

14. Your memorialists have been led to inquire into the origin of this astounding proposal, and find that it is the result of a compromise arising from differences of opinion of your Excellency's Executive Council.

15. It appears from a despatch of the Government of India to the Secretary of State for India, dated the 9th September 1882, that a minority of the Council were in favor of the views expressed by Sir Charles Aitchison in a confidential communication, dated the 5th August 1882, that "the restriction introduced by the Code of Criminal Procedure upon the powers of Courts to enquire into and try charges against European British subjects, which (rest?) exclusively on race distinctions, are invidious and unnecessary"; that is, that all exemption of Europeans in the interior or Mufassal should be swept away, that no person should be exempted from the jurisdiction of any criminal Court in India, and that any Native officer who has power to try a Native for any offence and to pass any sentence upon him should have power to try a European for the same offence and to pass the same sentence upon him.

16. It appears from the same despatch that the majority of the Council declined to accept any such sweeping proposal.

17. It appears further that the Government of India did not think it worth while to legislate unless they could remove from the Statute-book all trace of what they term "race disqualification of judges." and, therefore,

so far as your memorialists can gather, as the majority of the Council refused to get rid of the "race disqualification" by qualifying the ordinary uncovenanted Native official, it seems to have been suggested that the desired symmetry in the Statute-book might be produced, and the anomaly got rid of, by disqualifying all the uncovenanted European officials (other than European assistant commissioners and cantonment magistrates), against whose efficiency and fitness there has never been any complaint, and who under the existing law are qualified to exercise criminal jurisdiction over European British subjects.

18. This curious compromise appears to have been adopted, and the present Bill seems to have been introduced to give effect to it, without the smallest attempt to ascertain the feelings of non-official Europeans, or to consider the outcome of this wholesale European disqualification.

19. The principle embodied in the measure is supported by arguments based on the so-called anomalous character of the present law, on the alleged invidiousness of the disqualification attaching to Native judicial officers, and, lastly, on certain administrative difficulties stated to have resulted, or as likely to result, from such disqualification.

20. It cannot be contended as a valid or reasonable argument that the right of European British subjects in India to be tried on criminal charges by judges of their own race is open to any serious practical objection by reason of its special and limited character. In a country like India, subject by right of conquest to the dominion of an alien people, inhabited by numerous races of different origin and different creeds, swept as it has been by successive tides of foreign invasion, which have left behind them peculiar and exclusive privileges, as—the hereditary rights of particular classes and special individuals, where immutable laws of caste, surviving the shock of contending systems and accepted as divine by millions, have during countless ages circumscribed the sphere of individual action and defined gradations of rank dependent on birth alone, and which are neither to be won by merit nor purchased by wealth, until the very idea of equality has come to be regarded by a vast body of the population as a grave sin against the divine inheritance of birth, where too the avowed principle of British policy had hitherto been the conservation, so far as possible, of every existing right, whether founded on the fragmentary remains of ancient laws, or on the prejudices of religion, caste or social customs,—in such a country and under such existing anomalous systems, your memorialists feel justified in urging that there is no special or unreasonable anomaly in the existence of the right now sought to be taken away, and that the anomaly, if such it can be called, must be sought for in the person of the judge and not in the conditions under which he is permitted to exercise jurisdiction. That a Native magistrate, however much it is to be regretted, should ever have been invested with special jurisdiction over European British subjects within the presidency-towns, whilst he was excluded from the exercise of a like jurisdiction outside such presidency-towns, is in no way anomalous to those who have even a limited experience of the social conditions, privileges, and prejudices existing in India, and can only appear anomalous to those who are ignorant of the distinctive circumstances under which these judicial and magisterial powers are exercised. All such anomalies, if such they be, must remain as inseparable constituents of the paramount anomaly of all, namely, the existence, in fact, of the supremacy of British rule in India.

21. The arguments based on the alleged injustice of the so-called judicial disqualification of Natives to try European British subjects on criminal charges are hardly worthy of serious consideration. They assume the existence of some right, inherent or conferred, which has been wrongfully invaded. Your memorialists venture to submit that there cannot be a right to try Europeans existing in Natives, any more than there is a right in Englishmen in England to try peers of the realm for treason and felony.

22. Your memorialists are at a loss to discover in which of the countless races of India this alleged right is supposed to exist. If in the heterogeneous mass of the Native races of India, then it may be well pointed out that their various social systems are entirely founded on the recognition of special rights and peculiar privileges. It can hardly be permitted, therefore, to

any Native, of any race, creed, or nationality, to argue that the existence of the right which the European British subject now enjoys in this respect is to be condemned because it is a peculiar race-protection. Your memorialists would contend that, even were its maintenance claimed on no higher grounds than sentiment or prejudice, its existence could not afford a legitimate grievance to those whose personal laws have been expressly secured to them by British legislation, and in deference to whose social prejudices, allow to override the requirements of impartial justice, their females, who live or claim to live in seclusion, and their men of rank and position, are exempted from appearing in British courts of justice as witnesses. The special exemption of European British subjects has been recognised by the most thoughtful Natives as a requisite protection and as necessary for the employment of European capital in India. And your memorialists confidently assert that the exclusion of European British subjects from the criminal jurisdiction of Natives has never formed a ground of complaint with the Native populations of India as a united body. The want of homogeneity amongst the Native inhabitants of India, antipathies of creeds, inequalities of caste, the mutual distrust and jealousies of different tribes, the profound and unqualified contempt felt and expressed by the brave and hardy races of the North-west and of the Central Provinces for the Bengali, from whose ranks the Native covenanted civil servants are chiefly drawn, all combine to prevent the possibility of such a complaint.

23. The argument in this particular of invidious race disqualification, which your memorialists venture to think owed its origin entirely to European official inspiration; is confined to a few semi-Anglicised Natives and the limited class of youthful agitators whom they are enabled to influence. Even viewing, for the sake of argument, the subject of jurisdiction as a mere question of feeling, still your memorialists venture to deny the justice of sacrificing the feelings of the whole European community in India to the vanity of a few Native officials, or to the aspirations of a small influential class of the Native population of Lower Bengal. And since, in support of their supposed claim to criminal jurisdiction over European British subjects, it is urged that Native civil servants appointed by competition in England (a class which will form but a very small proportion of the entire Native covenanted civil service) by their education and by their residence in England have become thoroughly imbued with English ideas of justice, your memorialists are justified in presuming that they have also arrived at a sufficient appreciation of the principles underlying the British system of trial by a man's own peers to regard their personal disqualification as no greater insult to their ability or integrity than a British juror would deem the demand of an accused alien to be tried by a mixed jury. The so-called disqualification of Native members of the covenanted civil service to try Europeans is really not a disqualification of the judge, but a privilege of Europeans to insist on being tried in a court presided over by a European, and it affects equally uncovenanted as well as covenanted Native officials. It would be as reasonable to speak of the privilege of Europeans to demand a jury composed one-half or more of Europeans as a disqualification of Native jurors.

24. So far as the alleged right is supposed to exist in the Native members of the covenanted civil service, its existence rests on the assumption that the admission of Natives to that service involves the promise that they shall be allowed to exercise every power which may be conferred on their European colleagues, and that their selection for any particular office necessarily implies their fitness to discharge all functions ordinarily appertaining thereto; and it has been urged that the continuance of race disqualification is repugnant to the spirit of Imperial legislation, which by Statute 3 & 4 Wm. IV., c. 85, declared that no Native subject, should by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the East India Company, and also of Her Majesty's Gracious Proclamation in 1858, announcing Her will that, as far as may be, Her subjects, of whatever race or creed, should be impartially admitted to offices in the service of the Crown, the duties of which they might be qualified by their education, ability, and integrity duly

to discharge. But the guarded language of the Statute and of the Proclamation reserved all questions of political expediency; and the admission of Natives to the covenanted civil service afforded no grounds for the assumption that in respect to the Natives so admitted no such questions could possibly arise.

25. The existing law sufficiently provides for the appointment of Natives to all offices of emolument, even to those of district judge and district magistrate, and obviates all inconvenience arising from the right of Europeans within their jurisdiction to be tried by a European judge or magistrate, by making provision for the transfer of such cases to another court, or, as it is termed in England, for a change of the venue; and it should be borne in mind that these cases are admitted to be rare by the mover and the supporters of the Bill.

26. Your memorialists crave permission to point out that, in admitting Natives to the new statutory civil service of India, the Government has evinced a tender anxiety to avoid wounding all alien susceptibilities, even such as exist between the various Asiatic races of India *inter se*. In the notification gazetted on the 22nd of August 1879, it is stated that each Local Government is empowered to nominate certain Natives of India for employment in the civil service within the territories subordinate to such Local Government. It is, however, specially provided that Natives so admitted to the civil service shall be ordinarily appointed only to office in that province where they were first appointed; thus affirming the wise principle that it would be unjust and inexpedient to subject the Natives of one province to the jurisdiction of Natives of a different province, save only under the pressure of some exceptionally (*sic. in orig.*) State requirement. The wholly repugnant customs and prejudices of Western and Eastern races infinitely increase the danger and injustice of subjecting European British subjects to the criminal jurisdiction of Native judicial officers.

27. Your memorialists would humbly urge upon your Excellency the grave objections which exist to empowering Natives in the Mufassal to try Europeans, on the ground of their unfitness to exercise such power.

28. Your memorialists would further urge upon the consideration of your Excellency that serious discontent may be engendered among European troops by Natives being rendered eligible for appointment as cantonment magistrates, and that, even if it be assumed that the Government will never exercise the power of appointing Natives to act as cantonment magistrates, but will continue, as, heretofore, to appoint Europeans only to such offices, still a Native district magistrate would be entitled at any time, under section 528 of Act X. of 1882, to withdraw any case from any cantonment magistrate within his district and to try such case himself.

29. The social system of the Native inhabitants of India, the seclusion of Native ladies in the zenana, the backward state of Native female education, prejudices of caste which make the Hindu regard contact with the European as contamination, and the bigoted character of the Muhammadan creed, prevent all possibility of free and unreserved intercourse between the European and Native communities, and the consequent growth of any real sympathy between them. In the absence of such sympathy, the Native judge, however honourable and high-minded he may be, cannot properly appreciate the motives of European conduct, and is therefore incapacitated from forming a correct judgment on the natural presumptions of European actions. Moreover, whereas the European inhabitants of India have some security for the just and honest discharge of judicial duties by a fellow-countryman whose character and modes of thought have been moulded under a religious and moral system and domestic and external influences identical with, or similar to, those under which they have themselves been reared, and whose present actions continued to be governed by influences of the same character, in the case of Native magistrates no such guarantees exist. It is impossible to believe that a few years of early manhood passed in England, or the intellectual training which these magistrates may have undergone, can possibly suffice to change their whole moral nature, or to eradicate the ideas of right and wrong in which their childhood was trained, and which regulate the actions and sentiments of that society to the influence of which they are

again subjected on their return to India. It is contrary to experience to believe that in so short a period they can have succeeded in stifling every prejudice of caste or race, or in emancipating themselves from the subtle influences of domestic and popular sentiment by which they are surrounded, and to which they have been subjected from early youth.

30. The domestic and social institutions of the Natives of India whether Muhammadans or Hindus, based as they are upon a system of polygamy combined with female seclusion, have been developed on lines so opposed in the most essential particulars to those of Europeans, and have engendered as their necessary and indissoluble correlates such opposite habits, feeling, and ideas, especially in matters concerning the relations and mutual conduct of the sexes, and all the incidents of such relations and conduct, as to render Natives of India wholly incompetent to estimate correctly or even intelligently the significance of facts connected with them, and consequently incompetent to arrive at just conclusions regarding them. The effect of the proposed measure would, therefore, be to transfer criminal jurisdiction over European British subjects in an important class of cases affecting the domestic happiness and peace of the parties concerned, from men who by community of institutions, feelings, and ideas are competent to form correct conclusions, to men who, however honest they may be, must necessarily, from the absence of such community of institutions, feelings, and ideas, be incapacitated from arriving at even intelligent conclusions concerning them.

31. That not only would serious risk thus arise of great injustice and misery being inflicted on innocent persons, but grave scandal and injury to the reputation of European British subjects would be created.

32. Your memorialists further desire to point out that, owing to the disgrace which attaches in Native estimation to the appearance of respectable women in open court, a feeling from which your memorialists believe no Native is entirely free, an Englishwoman placed for trial before a Native judge would encounter an unavoidable prejudice in his eyes, and thus be placed at a serious disadvantage; while in the eyes of the more ignorant spectators of her disgrace she would be covered with obloquy, to the injury of her self-respect and of the esteem of the Natives around her.

33. So great is the contempt in which the Muhammadan and Hindu Natives of India hold the female sex, that an Englishwoman brought before a judge of either of these races to be tried for a criminal offence would be thereby subjected to a special indignity of the most galling kind, and one to which it would be in a high degree inhuman, unjust, and impolitic to expose her. A knowledge of this circumstance would furnish a dangerous temptation to Native dependents and others to persecute Englishwomen with false charges for the purposes of extortion and intimidation.

34. Not only are Europeans in the interior of the country isolated in the sense of being solitary units in the midst of tens of thousands of an alien race, but, by reason of difference of language, habits, and feelings, and the absence of common ties and sympathies, they are also morally and socially isolated from the Natives around them. In consequence of this isolation, they stand at an insuperable disadvantage in respect of the means of combating, or even ascertaining the existence of, conspiracies to bring false charges against them, or of rebutting the evidence brought forward in support of such charges; and the only counterpoise to this disadvantage which they possess is the right of being tried by European British subjects, of which right the Bill would deprive them.

35. That the necessary protection which the European British subject now has against false charges, which constitute the common weapon of offence and annoyance amongst the Natives of India, which protection partly depends upon the feeling which such charges inspire in the mind of the British magistrate, and partly upon the just severity of the punishment he awards to the offender, will be materially impaired, if not completely destroyed, when such charges can be preferred with comparative impunity before a Native magistrate, who would regard them as the ordinary incidents of legal warfare and the natural weapon of the weak against the strong, reprehensible possibly, but still to be dealt with leniently and as of no great consequence, specially when directed against Europeans in the interior. It

is well to remember, also, that the Native press is for the most part antagonistic to Europeans, and generally takes a prejudiced view in all those cases in which there is a conflict, either criminal or civil, between members of the two races. It is only natural to suppose that Native magistrates will in some degree be biassed by the expressions of opinion published in these papers.

36. Moreover, throughout the greater portion of India where European British settlers gather no strength from numbers, but live isolated from their fellow-countrymen, their exemption from the criminal jurisdiction of Native magistrates has invested them in the eyes of the Natives by whom they are surrounded with a certain prestige, which in itself affords no little protection against the danger of false accusation. But, as the foundations of such prestige become undermined, and Europeans are lowered to the same level as that on which their accusers stand, they will necessarily be deprived of this protection also, and will be subjected to still more frequent harassment in this manner; and not only will the danger to themselves be thus materially increased, but their influence for good on the Native population in whose midst they live will be proportionately weakened.

37. It has been stated that the jurisdiction which Native judges have exercised for many years in civil cases in which European British subjects may be concerned affords a conclusive answer to those who oppose the investment of Native magistrates with the criminal jurisdiction over European British subjects, that the objections and fears which are now expressed are identical with those expressed in 1836, and that time has shown the apprehensions then entertained to have been groundless. As regards the two latter statements, your memorialists would point out that the agitation of 1836 was an agitation against the extension of the jurisdiction of the Company's courts over British subjects, and was not specially directed against the investment of Native judicial officers with such jurisdiction; on the contrary, the leaders of Native society in Calcutta allied themselves in 1836 with their British fellow-subjects in opposing the extension of jurisdiction which was then contemplated. The fears then expressed have been in a great measure justified by events, and, so far as they may have been falsified by time, this has resulted only in consequence of the whole constitution and system of the Company's courts having been subsequently altered. Your memorialists, moreover, while abstaining from entering on an examination of the merits and defects of Natives as civil judges, deny that the exercise of civil jurisdiction by Native judges affords an adequate, or indeed any, guarantee that Native magistrates will exercise criminal jurisdiction over Europeans in a satisfactory manner. The conditions under which the two kinds of jurisdiction are exercised differ in every material particular. The very nature of a criminal complaint, the police agency by which evidence in its support is so frequently obtained, the character of the evidence itself, and the difficulty in many cases of disproving it, the position of the accused on his trial, his imperfect acquaintance with the vernacular language, and the legal liabilities to which he is subject before as well as after trial, all tend to place criminal proceedings on a wholly different footing from a civil action, and to displace any arguments in favour of the Bill attempted to be founded on past experience of the manner in which civil jurisdiction has been exercised by Native judges. It is to be remembered also that a system of bribery is rampant throughout India, that the Native police are in very many instances excessively venal and corrupt, and that the promotion of the magistrates and the police is to some extent dependent upon their record of conviction.

38. The administrative difficulties anticipated from a continuance of the so-called disqualification of Native covenanted civil servants are, as your memorialists allege, difficulties of a purely visionary and theoretical character. There are at present not more than nine Native members of the covenanted civil service selected by competition in England. Only two of these are of sufficient standing to be affected by the measure, and for several years to come not more than four or five can possibly come within its operation. But, even were their numbers far larger, there are numerous districts in India without a European resident, where the judicial functions of the Native magistrate can be utilised without danger or fear of offence to any member

of the community, and where his official dignity will not be wounded by the exemption of a single individual from his jurisdiction. In addition to this consideration there remains the fact that there is no district in India without at least one European magisterial officer. Moreover, in Bengal, where the Bill must admittedly have the most extensive operation, your memorialists have the public assurance of the present Lieutenant-Governor that no administrative difficulty will be felt.

39. Somewhat inconsistently with arguments founded on such supposed administrative difficulties, it is urged that the Bill will confer criminal jurisdiction over European British subjects on only a few Native officials, and that the removal once for all of all judicial disqualification dependent on birth alone carries with it an element of finality, and surprise is accordingly affected at any opposition to a measure which is said to rest on principles of natural justice, which will effect so small a change, and which cannot be further extended. The alleged finality of the measure is delusive, and the arguments founded on natural justice find their logical conclusion in the abolition of every distinctive right and privilege which the European British subject now enjoys, and amongst others those which the Bill has advisedly left untouched, the courts by which he can be tried, the punishments they may inflict upon him, the mode of trial, his right of appeal, and his right to be brought before the High Court if wrongfully detained in custody. The principle of perfect equality, once admitted as paramount to every other consideration of State, would gain its crowning result in a Native Viceroy and a Native Commander-in-Chief.

40. As to the disqualification of all Europeans not being covenanted civil servants, assistant commissioners or cantonment magistrates, your memorialists would remark that, so far from conducing to the better administration of justice, it will produce great practical inconvenience. At present, there are in Lower Bengal alone forty uncovenanted European deputy magistrates with first class powers who are justices of the peace and have power to try Europeans, which powers it is admitted that they exercise satisfactorily and efficiently. These forty will not be affected by the Bill. But there are a large number of Europeans in the uncovenanted service who, as they attained first class powers, would have been made justices of the peace, and would have been authorised to try, as a matter of course, Europeans charged with petty offences. The Local Governments, if this measure passes, will be debarred from using the services of these men in their respective sub-divisions for the prompt and speedy adjudication of European cases, and such cases will have to be transferred to some court presided over by a covenanted civilian; thus creating an absolutely gratuitous inconvenience, having no shadow of justification except the removal of an alleged anomaly, which is only one of numerous anomalies of the same description which the Government have determined to retain.

41. Your memorialists would point out that the Native statutory civil service, which it is proposed to substitute for the disqualified Europeans, is comprised of a new and comparatively untried class; that it will be many years before any member of that service will be senior enough to be invested with first class powers or to be made a district judge or district magistrate, so as to be empowered to try Europeans; that its members are chosen by nomination in India, not by competition or in England; that they are usually selected on account of the social position or influence of their families; and that they have been described in one of the confidential communications to Government, by the Judicial Commissioner of Oudh, as often "saturated with caste and religious prejudices and ignorant of European modes of thought and feeling," and not to be trusted to "hold the scales fairly." Your memorialists humbly submit that it cannot be for the interests of justice to disqualify experienced European uncovenanted deputy magistrates, who are admittedly fit and efficient, and to substitute for them as criminal judges over your memorialists such a class as this.

42. Your memorialists would further point out that European master attendants have hitherto been constituted justices of the peace in various ports in India, and have been found of great use in dealing with English and foreign sailors; and that in the interior a large number of non-official

Europeans have been appointed honorary magistrates and justices of the peace, and as such have rendered valuable assistance to the Government in the administration of justice. It is now proposed, with no cause assigned therefor, to disqualify all such Europeans from being appointed justices of the peace. The Bill, therefore, so far from being an enabling Bill, as it has been termed by its supporters, is practically a disabling Bill of a very sweeping character, and is entirely destructive of an important existing machinery of British administration in India.

43. The administrative working of the proposed measure, moreover, will lodge the Government of India in the following extraordinary and mischievous cross anomaly, that a large and increasing number of Europeans will be for the future unqualified to act as justices of the peace, and will therefore be incompetent to try European British subjects, although the Government will still have power to appoint them honorary magistrates with jurisdiction to try Native offenders; whilst, on the other hand, in the place of this disqualified class, Natives will be eligible to act as justices of the peace with the power of exercising criminal jurisdiction over European British subjects. If the Indian Government desired to remove any anomaly in the administration of criminal justice, it would surely have been wiser to have left to Europeans a criminal jurisdiction, naturally exercised over European British subjects, and to have confined Native magistrates to a like jurisdiction over their Native fellow-subjects.

44. Your memorialists submit, moreover, that the right of European British subjects to be tried on criminal charges by European British magistrates and judges has infinitely stronger claims on justice than rest on sentiment alone, and is based on principles of policy which are inseparably bound up with the welfare of India and the prosperity of all classes of Her Majesty's subjects, Native as well as European. Your memorialists claim that the preservation of that right is essentially expedient. For in no country is confidence in the administration of justice, and especially of criminal justice, more essential to the well-being of the community than it is in India, which owes to British capital and energy the recent rapid development of her natural resources, as illustrated by the railway system and the abnormal growth of tea, jute, coal, and other industries—industries which contribute in so important a manner to the marked prosperity of her people, and which in years of scarcity or famine support millions of her Native inhabitants, who but for such support would perish miserably. Your memorialists regard the right to be tried by European judicial officers as a safeguard which has been of the utmost value to them in the past while initiating enterprise in the Mufassal, and which will be essential to them in the future for the prosecution of those enterprises by which India has so much benefited; and your memorialists are anxious to impress upon your Excellency that the enormous European capital which is already invested, and which is about still further to be invested, will assuredly seek other channels if British capitalists and their employes are forced to lose confidence in the criminal courts of the land by which they have hitherto been, partially, at all events, protected from persecution and aggression.

45. Your memorialists desire to remind your Excellency that the British Government has been always careful to protect British subjects in Oriental countries from trial by Oriental tribunals. They fail to understand why this protection, which has been so universally and invariably accorded hitherto, should now be withdrawn in India, and they desire, moreover, to impress upon your Excellency that the right which they seek so jealously to maintain is simply a protective right, and is in no sense capable of being construed as an invasion of the rights and privileges enjoyed by the Native subjects of Her Majesty in India. The grievous loss which they will sustain will bring no kind of compensatory gain to their Native fellow-subjects.

Your memorialists therefore humbly pray that your Excellency will take into consideration the facts and arguments set forth in this their humble memorial, and that upon such consideration your Excellency will deem it inexpedient and hurtful to the prosperity and welfare of the Empire to deprive your memorialists of their existing rights and privileges, and be

pleased to direct the withdrawal as soon as possible of the Bill now before your Excellency's Council, by which it is proposed to take away such rights.

And your memorialists, as in duty bound, will ever pray.

(Signed) J. J. J. KESWICK,
and 11,782 others.

No. 68.

LETTER from the SECRETARIES, PUNA SARVAJANIK SABHÁ, to
SECRETARY TO GOVERNMENT OF INDIA, Legislative Department (No. 100).

Dated 23rd June 1883.

WE are directed by the Managing Committee of the Puna Sarvajanic Sabhá to forward to you the accompanying memorial to His Excellency the Right Honourable the Viceroy and Governor-General of India in Council on the subject of the Criminal Procedure Code Amendment Bill, and to request you to lay the same before his Excellency in Council for his favourable consideration.

We have, &c.,
(Signed) SHIVRAM HARY SATHE.
S. T. T. CHIPLUNKAR.

MEMORIAL of NATIVE INHABITANTS of PUNA (dated 23rd June 1883) to
His Excellency the Most Noble the MARQUIS OF RIPON, K.G., G.M.S.I.,
Viceroy and Governor General of India in Council;—referred to in
preceding Letter.

THE humble memorial of the Native inhabitants of the city and cantonment of Puna in public meeting assembled—

Most respectfully sheweth—

That your memorialists have watched with great interest the progress of the Native Magistrates' Jurisdiction Bill, which was introduced in the Supreme Legislative Council in February last, and which was on the 9th of March last referred to the Local Governments for the detailed consideration of the provisions of the Bill.

Your memorialists do not regret the delay which this further reference has caused in the final passage of the Bill through the Council. As several provisions of the Bill have provoked a violent panic and opposition in an important section of the community, this further reference is in consonance with the declared policy of your Excellency's Government to allow a full hearing to all parties concerned in any proposed legislative measure. As the Local Governments have already approved of the principle of the Bill, your memorialists feel a just confidence that they will reaffirm the wisdom and justice of the proposed legislation, and suggest such improvements as will consistently carry out the traditional policy of Her Majesty's Government in India. Your Excellency has declared from your seat in the Council that no violence, misrepresentation, or menace will ever induce Government to swerve from the path of duty, and this noble assurance satisfies your memorialists that, notwithstanding the violent agitation in certain quarters, the proposed amendment of the Code of Criminal Procedure will ere long become the law of the land.

The present opposition to the measure has had its counterpart on previous occasions whenever the Government proposed any change in the law by which the invidious distinctions of race and colour were likely to be curtailed, and a practical equality of rights and privileges was sought to be established between all classes of Her Majesty's subjects. The opposition is virtually founded upon a claim for the recognition of European British-born subjects as a superior caste with exceptional privileges. This claim, however, has been

invariably negatived by Her Majesty's Government whenever it was advanced. The Court of Directors laid down the policy that there shall not be a governing caste in India, and this policy was affirmed by Parliament in 1833, and by the Indian Legislature in 1837, when Europeans were subjected to the civil jurisdiction of the Company's courts. It was again reaffirmed in 1853, when the civil service was opened to all classes of Her Majesty's subjects, and in the Proclamation of 1858, when a similar declaration was vouchsafed by Her most Gracious Majesty.

The change now sought to be made was first proposed by the highest authorities in 1849, during the administration of the Marquis of Dalhousie, and again in 1857. The same proposal was again made in 1872, on the occasion of the passing of the Criminal Procedure Code, and, though it was lost by a small minority at the time, the subject could not finally rest on the basis then adopted, as it was inconsistent with the foundations of British supremacy in India, and the declared policy of the Crown and Parliament. The violent opposition that has been raised in certain quarters only furnishes an additional argument for abolishing all invidious distinctions which, so long as they are retained, demoralise the European section, and create uneasiness and discontent among Her Majesty's Native subjects.

The opposition in the present case is confessedly not so much against the particular measure under consideration as against the general policy followed by the Government of India during the last three years. That policy seeks to improve the political condition of the Native races and to promote their material prosperity. The opponents cling to the idea that several of the measures recently carried out will affect the vested interests and the monopoly of power they claim, and it is this circumstance which has aggravated the ill-feeling displayed by them. It, therefore, becomes more than ever necessary that your Excellency's Government should persevere in its firm resolve to secure the final success of its noble policy.

Your memorialists will now briefly address themselves to the consideration of some of the principal grounds on which the present opposition is sought to be justified. The first of these grounds is that the privilege of being tried by magistrates and judges who are themselves European British subjects is a personal law with Europeans in this country, and that, as the Hindu, Muhammadan, and Pársí communities have their own personal laws left intact, they have no reason to complain of the European community continuing to enjoy their privileges under a similar personal law. Your memorialists respectfully submit that such a special pleading is based upon an altogether misconceived notion. The Hindu and Muhammadan and Pársí communities do not, as is taken for granted, enjoy any special privileges whatever so far as criminal jurisdiction is concerned. In civil matters only, where the interests of other classes are in no way concerned, the Hindus and Muhammadans have their own laws, such as matrimonial laws and laws of inheritance and succession; but so do European subjects in India. No one asks for the repeal of the personal laws of inheritance, succession, and marriage affecting Europeans as a community. It is to be remembered further that, while the Hindu and Muhammadan and Pársí communities have their own personal laws in common with the European and other communities for the adjudication of certain civil matters affecting them, they enjoy no privilege whatever as to who shall administer those laws. It is one thing to claim the benefits of a personal law, and quite another to claim that persons of a particular birth or nationality, and none other, shall administer that law.

Another ground which is urged against the proposed alteration in the Criminal Procedure Code is that it threatens with extinction the alleged inalienable birthright of Europeans of being tried by their peers. This contention is, your memorialists humbly submit, quite groundless, for this alleged birthright has reference to the trial by jury and not to the race or colour of the presiding judge or magistrate. The analogy attempted to be shown in favour of this contention from the practice followed in Turkey, Egypt, China, Japan, and other foreign countries, where European subjects enjoy the privilege of being tried by special tribunals presided over by British consuls, &c., is incorrect and not applicable to the courts of this country; for the obvious reason that India, governed as she is by England, is not a

foreign country with laws of her own. In Ceylon, which is circumstanced exactly as India is, the European settlers enjoy no such special privileges, which fact militates against the alleged inalienable character of the supposed birthright of Europeans. Another circumstance which proves the hollowness and absurdity of the extravagant theory is that, in the presidency-towns, European British subjects enjoy no such privilege, being subject along with their native fellow-subjects to the criminal jurisdiction of the existing tribunals, no matter whether the presiding magistrate or judge be a Native or European. If the right were really inalienable, how can it be alienable in the presidency-towns and inalienable in the Mufassal. Moreover, when European British subjects were allowed to settle in India, they were told that they should be subject to the same laws and institutions by which the Natives of the country were governed. Your Excellency's unequivocal declaration from your seat in the Council on the 9th March last, that it will not be your duty to listen to any arguments which were at variance with the declared policy of the British Crown and successive Parliaments, fills your memorialists with hopes that your Excellency's Government will not swerve from the path of strict duty, but will, on the contrary, stand firm in giving effect to a policy laid down authoritatively and periodically reaffirmed by the Imperial Parliament.

The next argument of the opponents of the measure is that, if the proposed Bill is passed into law, it will deter Europeans from settling in the country, and thereby prevent not only the further investment of British capital in the Mufassal, but will even tend to the withdrawal of that already invested. The utter collapse of all attempts to rouse English public opinion against the proposed legislative measure through the English Chambers of Commerce is a clear proof of the untenable character of this argument. As representing British investors of capital in India, these bodies, when appealed to, would not have declined to point out the evil tendencies of the proposed measure in this direction, if there had existed reasonable grounds for that apprehension. Similarly, wild fears were entertained when, nearly half a century ago, the European settlers in this country were subjected for the first time to the civil jurisdiction of the Mufassal courts, but the experience of the last fifty years has practically proved the extravagant character of those fears. Now, throughout the country the entire subordinate judicial service is, as a general rule, recruited from the educated Natives of the country, who exercise original civil jurisdiction over European as well as Native subjects living within their local jurisdiction. And no suspicion has ever been breathed regarding the character of the administration of justice by these tribunals. Your memorialists, therefore, confidently trust that the same beneficial results will follow from the enactment of the proposed measure, the wisdom of which will be acknowledged not only by posterity but even by the present generation, and the present agitation will cease with the passing of the final decision.

Another argument relied upon by the opponents of the proposed measure is that, if it became law, Native magistrates and judges would be swayed by race-prejudices in trying European British subjects, and that false charges would be very frequently brought against Europeans by the Natives, who are alleged to be perjurers. It is with the utmost pain that your memorialists refer to this point. It serves to show the evil results of allowing special caste-privileges to any particular class of subjects. Your Excellency's memorialists feel confident that your Excellency's Government will treat with the contempt they deserve the gratuitous libels upon the integrity and honesty of the Native magistracy and upon the national character of the Indian races. If Hindu, Pársi, and Muhammadan magistrates daily administer justice to parties belonging to opposite races without a suspicion being breathed against their integrity and honesty, your memorialists fail to understand the reason why the very same magistrates should be considered incapable to deal out even-handed justice to European British subjects. That the assertions against the integrity and honesty of Native magistrates are recklessly made is conclusively shown by the fact that instances are not wanting of European British subjects having voluntarily waived their right of being tried by magistrates of their own race in favour of Native magistrates, such instances having occurred even after the present agitation had

been set on foot. Again, if the allegations regarding the trumped-up charges supported by false witnesses were true, they would mean that, notwithstanding all the efforts of the British Government and its representatives in this country to bring about a cordial understanding between Europeans and Natives, the latter entertained for the former nothing but unmitigated hatred and hostility—a state of things which the veriest pessimist would not care to endorse. Your memorialists feel convinced that nothing but the natural hauteur and unreasoning pride of belonging to a conquering nation leads a certain class to indulge at times in wild assertions of the nature referred to above, and that the most effectual mode of ensuring the cordiality of feelings between all classes of Her Majesty's subjects in India is to gradually abolish all invidious distinctions founded upon race, colour, and creed, so that all may feel their equality in the eyes of the law. Thus a constant source of irritation and suspicion between the two classes would be removed, and, as a necessary consequence, the foundations of British rule in India would be greatly strengthened.

In conclusion, your memorialists express an humble hope that the proposed legislative measure will soon be passed into law, without any compromise of the great principle of justice and equity on which it is based.

(Signed) KRISHNAJI LUXMUN NULKUR,
Chairman of the Public Meeting.

No. 69.

MEMORIAL of the ORISSA ASSOCIATION, Cuttack (dated 21st June 1883), to His Excellency the VICEROY and GOVERNOR-GENERAL OF INDIA IN COUNCIL.

THE humble memorial of the Orissa Association at Cuttack—

Most respectfully sheweth—

That your memorialists observe with feelings of gratitude and joy that a Bill to amend chapter XXXIII. of the Criminal Procedure Code, which judicially disqualifies Native magistrates to try European British subjects in criminal cases, has been introduced into your Excellency's Council. This step, your memorialists are aware, will tend to remove an invidious distinction and an anomaly in the administration of criminal justice in British India.

2. That your memorialists beg to state, clearly and emphatically, that a measure of this sort has always been in request amongst the Native community, and that they regard this Bill with watchful interest and profound solicitude, as one fraught with vital interest to the nation.

3. That your memorialists fervently hope that, under the wise and liberal Government of your Excellency, this just and righteous Bill will ere long be passed into law.

And your memorialists, as in duty bound, will ever pray.

(Signed) GOWREE SUNKER ROY,
Honorary Secretary.

No. 70.

LETTER from the SECRETARY, INDIAN TEA ASSOCIATION, to SECRETARY TO GOVERNMENT OF INDIA, Home Department.

Dated 14th May 1883.

By desire of the General Committee of the Indian Tea Association, I have this day forwarded to you, by parcel post, 12 copies of the report of a public meeting held at Silchar on the 21st ultimo, and I am to request that you will be good enough to place the proceedings before his Excellency the Viceroy and Governor General in Council.

I have, &c,
(Signed) G. M. BARTON.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

REPORT of a PUBLIC MEETING held at SILCHAR to protest against
MR. ILBERT'S BILL.*(Reprinted from the "Englishman" of May 2.)*

In response to a special invitation addressed to the whole of the non-official European community of the Cachar District, a large number of their body met on the 21st April 1883, in order to discuss the provisions of Mr. Ilbert's Criminal Code Amendment Bill.

There were present at the meeting—Messrs. D. S. Mackintosh, C. W. Griffith, A. S. Anderson, F. W. Plows, E. C. Showers, M. J. Balfour, E. T. Pearce, A. J. Preston, H. E. Sanderson, G. Gray, H. C. Sproull, A. Quillet, H. R. Blakeney, R. B. Doake, F. H. Malet, M. Bigge, T. Dykes, J. Paton, H. W. Morris, Dr. MacLaughlin, R. H. Halford, W. H. Chambers, M. Muller, M. Aitchison, E. J. Jones, R. H. Macdonald, F. R. Jones, S. Dible, J. Dowie, J. R. Ross, H. Weir, C. McLean, D. Fraser, P. J. Macdonald, J. Stirtan, R. Spicer, J. Grierson, E. Livermore, A. J. Reid, R. H. Farquhar, C. A. Eglinton, J. Green, G. E. Noad, W. C. Noad, C. J. Bell, R. Thomson, S. M. Fasson, J. Sidey, J. O. Bowhile, A. K. Trotter, R. F. Balkwill, A. R. MacKellar, C. T. Macrae, H. Grant, E. L. Edgar, J. W. Feltwell, J. J. Morison, M. G. Jukes, A. Stewart, C. Menzies, D. M. McLeod, J. H. M. Borrett, A. A. Bull, R. S. Elliot, G. Penny, Honourable R. R. Tyrwhitt, Dr. Dundee, J. Murray, R. J. R. Mackenzie, W. T. Smith, G. M. Loch, G. S. Rice, C. Lawrence, A. Spicer, K. H. Mullens, J. Inglis, A. S. Penny, J. F. Piffard, R. G. Craigie, L. Rodwell, S. D. Jackson, C. T. Pargiter, E. Beatson, J. Horne, H. Mackenzie, W. T. Cathcart, E. F. Skinner, J. Schalch, C. Williams, T. Keswick, A. R. Tawney, J. Grieg, A. Odling, G. S. W. Peter, G. A. Smith, C. S. Walliker, F. G. Stewart, C. H. Wright, A. Cooper, W. J. Temple, F. F. Clerihew, J. Peter, R. Wylie, J. McAnley, R. White, J. B. Doake, J. F. Playfair, D. Ferguson, H. A. Thornton, W. Black, and J. Hutcheson; and there were present by their proxy, Wm. Aitchison, Messrs. A. M. Bulteel, Dr. Fraser, J. Peddie, A. D. Brown, Dr. Jones, T. Smeal, H. B. Beglar, G. R. Nicholls, W. Henderson, J. G. Blair, E. G. Greenhill, A. Milne, J. Speid, T. Blair, G. C. Balfour, E. Rawlins, Hector Mackenzie, J. B. Atkins, A. M. Chalmers, W. Stiefelwagen, A. J. Judge, D. A. Laing, J. B. Lawrie, J. E. E. Corstorphine, H. B. Tater; by their proxy, D. S. Mackintosh, Messrs. Gordon Fraser, and D. J. Lewin; by his proxy, J. Hutcheson, Mr. W. T. Shave; by his proxy, Dr. MacLaughlin, Mr. Fred. Forbes; by his proxy, A. J. Preston, Mr. D. P. Thomson; by his proxy, M. Bigge, Mr. W. L. Clark; by their proxy, R. B. Doake, Messrs. P. E. Thriepland and T. G. Stroke; by their proxy, P. J. Macdonald, Messrs. C. H. Moore, G. R. Geale, C. E. Pickford, and Dr. Cowen; by his proxy, J. Stirtan, Mr. J. A. Thompson; by his proxy, E. Livermore, Mr. C. McArthur; by his proxy, C. J. Bell, Mr. H. D. A. Allies; by their proxy, M. Muller, Messrs. E. S. Cornish and A. Raddiffe; by his proxy, A. Stewart, Mr. J. Wilson; by his proxy, C. Menzies, Messrs. W. Macnab, R. H. Talbot, and J. S. Guise; by their proxy, D. M. McLeod, Messrs. D. P. H. Douglas, and W. M. Munro; by their proxy, R. S. Elliot, Messrs. J. McIlwraith, and H. Chamney; by his proxy, G. M. Louch, Mr. R. A. Clarke; by his proxy, C. Lawrence, Mr. A. Harper; by his proxy A. S. Penny, Mr. A. S. Muspratt; by his proxy, L. Rodwell, Mr. A. L. Bradford; by their proxy, S. D. Jackson, Messrs. G. B. Mackellar, C. G. Cockburn and J. W. S. D. Clark; by his proxy, E. L. Edgar, Mr. T. Towers; by their proxy, E. F. Skinner, Messrs. A. E. Butler, Dr. Reid, A. Osborn, D. McWha and A. B. Woodroffe; by his proxy, J. Grieg, Mr. J. C. Allen; by their proxy, C. S. Walliker, Messrs. P. A. Campbell and F. T. Mackenzie; by his proxy, R. Wylie, Mr. H. A. Blockman; by their proxy, J. Peter, Messrs. F. Barter, J. R. H. Lawrie, E. A. Sissmore, T. R. Lawson, and J. Innes; by their proxy, R. White, Messrs. H. E. Crawford, Dr. Smyth, W. J. Butler, C. E. Jackson, and C. Hurst; by their proxy, G. F. Playfair, Messrs. R. Mackintosh, J. M. Barry, and H. Playfair; and by his proxy, D. Ferguson, Mr. J. Downer. The total number of the non-official adult male European

population of Cachar is 194, and it will be seen from the above list of names that out of this number 111 were present personally at the meeting, and 81 by proxy, leaving only 2 unrepresented. The officials who attended the meeting were:—Mr. J. Knox Wight, the Deputy Commissioner of Cachar, Mr. W. W. Daly, Superintendent of Police, Dr. Monteath, Mr. Barker, Mr. J. A. Brown, and Captain Angelo.

It was proposed by Mr. A. Stewart, seconded by Mr. C. Menzies, and carried unanimously, that Mr. Aitchison take the Chair.

The Chairman then, in opening the proceedings, said :—"Gentlemen, I thank you for the honour you have conferred on me in electing me to the Chair on such an important occasion. It gives me much pleasure to see such a large number of our community met here in response to the invitation which I issued on the 9th instant. And perhaps it might be well to explain how it comes about that this meeting had not taken place very much earlier and at the time when meetings were being hurriedly called together in every corner, I may say, of this vast Empire, to protest against the passing of Mr. Ilbert's Bill, which he introduced into the Viceregal Council for the purpose of the so-called amendment of the Criminal Procedure Code. You are aware that there is an elected body to represent Planters in this district in the general committee and sub-committee of the Cachar branch of the Indian Tea Association. That body generally deals with all questions relating both to the direct and indirect interests of the industry, and it is found sufficient to cope with the ordinary questions which arise from time to time; and therefore generally speaking, and happily, there is no necessity for calling together such a meeting as this. But this question being so extremely exceptional and striking so vitally at the liberty of every individual of our community, whether members of the Tea Association or not, this meeting became an urgent and unavoidable necessity. I had been pressed from various directions, and for weeks past, to call a meeting, and I will now go on to show how it has been postponed.

At a meeting of the general committee of the Tea Association, held on the 14th February last, a proposal was made by Mr. A. Spicer, and unanimously and warmly supported, that we forward to Government our strongest protest against the passing of Mr. Ilbert's Criminal Procedure Bill. Now it may surprise some of you to tell you that this was the first movement made against the Bill by any body of men in any of the planting districts; at least, it was the first, so far I can learn from the newspaper reports of meetings and other sources of information. When Mr. Spicer's proposal was made, it was thought best to get a memorial also drawn up, petitioning Government to withdraw the Bill, and to get that memorial drawn up in Calcutta by a qualified man. We were then aware that time was of consequence, and in order to expedite matters it was agreed to canvass the district, through our sub-committees, and get all the signatures procurable, to be in readiness for appending to the memorial as soon as it arrived. But to do even this there was not time, and a telegram came to Mr. Bell, our Association secretary, saying that we must get up a meeting at once if we did not wish to have the Bill passed. Two or three days after receipt of that telegram there happened to be, rather an unusually large meeting of planters in Silchar, but Mr. Bell, being ill at the time, sent the telegram and other papers in to me and requested me to hold a meeting, if possible, of those present in the station that day. So the meeting was held, and shortly after another small meeting was hurriedly called and held in Hailakandi sub-division. But it was never intended that nothing further should be done; for from that day it was clearly seen that the whole European community must be called together, as the more the question was looked at and considered, the more vital did we see would be the effects of such a serious curtailment of our inherited liberty. The sole reason, therefore, for this meeting being put back until now is that we could get no certainty as to the time the memorial would be forthcoming. News was constantly being received that the memorial was coming, but it never came and has not to this day. But I dare say if the members of the general committee who were present at that meeting of the 14th February had had the least suspicion that the memorial would have been so long delayed, they would have arranged amongst themselves to have had it drawn up. This then brings us

to the present. However, I do not think there is much to regret in our meeting having been postponed until now, for we certainly are in a better position to show our strength to Government than we were six weeks ago, before we had much discussed the question, and got it explained and held up to the light of reason, in all possible phases, by the ablest men in India, as well as by such men as Sir FitzJames Stephen, Sir Louis Jackson, Mr. Seton-Karr, and other old and experienced Indians now living at home. And although we may be able to contribute hardly an item of additional argument to the brilliant and overwhelming reasoning that has been brought to bear on the question at issue, yet it is our duty to meet as we have done now, and do all we can to show Government that time only adds to our strength in vigorously opposing the Bill, which we all look on as a dangerous infringement of our cherished and unalienable rights, and which we solemnly believe, if passed, will result in disaster and the worst of consequence to all Europeans in India, but especially to those living in the Mofussil, to their industries, and to that of tea planting in particular. Time must not blunt us in our opposition to such a dangerous measure, but it must give us only renewed strength and power to combat the threatened evil, and we must not think of rest until the Bill is withdrawn; and until that much desired object is attained every legitimate means must be lifted up and hurled against it. I would now merely add that I call upon you all to do your utmost to support me in this onerous position, and let us have this meeting as quietly and orderly conducted as possible. And although I would not desire to restrain any one from freely discussing the question before us, still I would fain hope that no one will be carried away into using intemperate language, which might make it appear to Government that we are taking up a menacing position which no good Government could possibly tolerate. For I know well that our loyalty cannot be challenged and is second to none in India, and I also know that it is far from any one's intention here to show anything like a spirit of menace. But we want calmly and firmly to show forth to Government and the public that our rights are now seriously in danger. We solemnly believe, if the present policy is pursued to the end, the ties that were being slowly woven between Native and European, and which have already become weakened, must snap asunder, and nothing but an explosion and bloodshed can bring back the position for their possible re-union. With these few remarks I now beg leave to call upon Mr. Skinner to move the first resolution.

During the delivery of the above address the Chairman was frequently cheered, and he sat down amidst loud and prolonged applause.

On rising, Mr. Skinner, who was met with enthusiastic cheers, said:—Mr. Chairman and Gentlemen,—I beg to put for your acceptance the following proposal—"This meeting strongly objects to the proposed change in the Criminal Procedure Code."

There has been no substantial failure of justice to call for a change in the existing law, which has worked smoothly hitherto, and given confidence to all without entailing any practical inconvenience upon the administration. This we know on the authority of His Honour the Lieutenant-Governor of Bengal, in which Province the Europeans mainly reside. The Chairman has explained to you the reason of the delay in calling the present meeting. If those who have accused us of coolness to the proposed change were present at this meeting, they would soon alter their opinion. (Loud cheers.) Considering the great distance many of us have had to come, and the difficulties that have stood in the way, the mere fact of our presence here to-day should be sufficient to show Government how strongly we feel on this, to us, most important subject. (Great applause.) We know on the very highest authority, as you have just heard from the Chairman, that this proposed change is unnecessary. This statement is applied to the whole of India, but, knowing as we do this district, we go further, and assert, that, for Cachar, the proposed change cannot but prove most injurious, for it will greatly tend to place every European at the mercy of the native. With the exception of a few natives in the district, it can not be denied, we are hated by them. Indeed, are we not often insulted by them on the public road, and do we not know of instances of base charges having been made against Europeans without there being the slightest foundation for them? Govern-

ment now proposes to enable the natives to lay criminal charges against Europeans before a native judge. What reason does it give for this sudden change? Does the Government prove any strong necessity for this change, or does it attempt to show that it is on account of the universally expressed wishes of the natives? I think not; indeed, I feel sure the native thinks it but natural that we should insist on being tried by a European. The proposed change may not affect Cachar just now, but, as soon as a native judge is appointed to this district, unjust criminal charges against Europeans are bound to be common, for the native will soon change his present mode of revenge for the more hurtful one. If we consider what the entourage of a native judge would be in a district like this, surrounded by only natives, it is easy to foresee what the result would be. For is bribery unknown in this district and have natives ceased to employ it? No, it is still rampant and made use of at the first opportunity. Gentlemen, I call upon you to make a stand against this iniquitous change, and to join as one man in our protest. (Great cheering.)

Mr. E. L. Edgar, in seconding the above resolution, said:—"Mr. Chairman and Gentlemen, having been called upon to second this resolution, I take the opportunity of making a few remarks on our present situation. As a proprietor in this district and being moreover about to leave India for a time, I feel acutely the position managers will shortly be placed in. In a very short time the chief of a tea district will be the only European official in it; it will be officered by Baboo civil surgeons, Baboo magistrates, and last, but to us of none the less importance, by Baboo superintendents of police. (Cheers.)

Now, although Cachar is comparatively thickly populated with planters, we have to consider the lot of those less fortunate in Assam proper, and other parts. (Cheers.) Take as an example a well laid plot against a manager at even one of what we might call remote gardens in this district. How very awkward it would be for the manager if, after being drawn into hurting a native, said native were withdrawn to be further operated upon by his (the native's) friends. The chief of the nearest police station (more than likely in the swim himself) investigates, the man or body, as the case may be, is sent, after suitable delay, to a Baboo civil surgeon, and after sufficient further delay has occurred, partly with the object of harassing accused, partly from the native nature, but three-fourths with the object of baffling accused in any evidence in his favour, the case is called up before a Baboo magistrate. The planter there stands arraigned on a charge many degrees beyond the true facts of the case, if not on a wrong charge altogether, and the whole onus, Baboo like, is put upon him alone, to clear himself the best way he can; his greatest difficulty being in his prolonged absence from the site of the occurrence, facts consequently being distorted, and for a specimen of the extraordinary reports native surgeons are capable of sending in, *vide* the *Englishman* of the 14th instant. Furthermore, what counsel have we at command in remote tea districts? (I may say that all tea districts are remote to counsel.) Why men who are only half educated, totally unpractical, and wholly without training, men who do not from one year's end to another travel two miles into the districts, and who consequently have no knowledge of the nature of things in them, and what is worse, will not exert themselves as counsel for the defence in any case brought by the powers that be, with the chief mooktear in the district opposed to them, prosecuting on behalf of Government, and who so continually exhibit the shallowness of their reasoning powers by putting the most idiotic questions alike to either side: also it will for ever be unknown to us what order of men the three aforesaid powers that will be, when at home and in dhooties, do not associate with. In fact our tenth rate advocate of doubtful social degree, in whom we have had to confide, may, for the nonce, be patronized as a boon companion, with the object in view—a conviction.

The horizon has another aspect that readily presents itself to me, it is this. It being an accepted fact that there is a growing tendency to reduce the number of European officials of all degrees in the tea districts, it will be simply impossible for those left to attend efficiently to garden and coolie inspection work as prescribed under Act I. of 1882, more especially section CXI. (Local Labour Contracts); who then are we to be favoured by? A

Baboo on a neighing mare with foal at side, or a shop-keeping member of the local self-government, both equally unpractical, to visit and report on our gardens, in fact on ourselves.

The remarks I have made, gentlemen, do not bear so directly on the burning question of granting increased powers to a class of men wholly ignorant of our estimate of the gulf between truth and falsehood, equity and justice. That I leave to others. As to the critical position into which we, as planters, are undoubtedly drifting, it is becoming daily more and more evident that our old coolies are getting out of hand, and what concerns us just as much in the present is, I submit, whether we shall remain *masters*, as well as managers, of estates, if to increased power to the few are added further appointments of the many. One or other, may be, we could survive, but not both." (Great cheering.)

The Chairman then put the first resolution to the meeting, and it was carried unanimously and with enthusiastic cheering.

The second resolution, proposed by Mr. R. B. Doake, and seconded by Mr. James Peter, reads as follows:—"Considering how every individual class in this country has its own peculiar customs and privileges, which are religiously guarded and preserved to it, this meeting thinks that a native of India should have been the very last person to propose that the Europeans should be deprived of the right to be tried by their countrymen, without which there can be no security to them for either life or property, in this land where the fabrication of false evidence is of every day occurrence for the gratification of extortion or revenge. And it is an undisputed fact that natives themselves, when convinced of the justice of their case, frequently make petition to have their cases transferred from a native to a European judge." In proposing this resolution Mr. Doake addressed the meeting as follows:—Mr. Chairman and Gentlemen, I feel that it needs no words of mine to recommend this resolution to this meeting. But there are one or two points in connection with it to which for a short time I would direct your attention.

And if you will allow me I do not think I can begin better than by explaining to you how it is that I, who was for a time partially in favour of Mr. Ilbert's Bill (Oh! Oh!), find myself standing here to-day to oppose it.

When I first saw the subject mooted, without paying much attention to it or knowing anything of what had gone before, I thought it seemed only fair that those men, who to some extent, at least, had thrown aside the prejudices of their race, had gone to England, had studied there for years and finally entered the Civil Service of India by successfully competing against Englishmen in a series of the most trying examinations, should not be debarred by reason of the colour of their skin from any privileges given to their fellow civilians.

At the same time I felt strongly opposed to giving any privileges not hitherto held by them to those persons who, possessing perhaps neither the brains nor the inclination necessary to enable them to enter the service by the gateway of open competition, found themselves let into it through the back door of favouritism without their ever leaving the country at all, and with all their prejudices and vices and superstitions thick upon them." (Cheers.)

"But when I looked more deeply into the matter and studied all that could be said on both sides both for and against the Bill, I came to see that this was not a question of the rights or privileges of our native friends at all. That if the constitutional, and I trust inalienable, right of an Englishman prevented Mr. Gupta, or any other gentleman not a British-born subject commissioned by *Her Majesty for the purpose*, from the privilege or pleasure of trying him for criminal offences, they had no cause of complaint whatever, for they were robbed of nothing that they hitherto possessed, nor was anything being kept back from them to which they were entitled." (Applause.)

For no man, no matter what his race or colour may be, has any inherent right to sit in judgment on his fellow men. This is a duty imposed by the Crown upon some of its servants for the benefit of its subjects and the convenience of the administration. And if the Government for any reason

should deem it fit to confer this duty upon any one of its servants, and not to confer it on another who may be in all respects equally worthy, no one has any reason to complain, unless it can be shown that some failure of justice or inconvenience to the State is the result. (Hear, hear, and loud applause.)

"In this matter there is therefore involved no question of the rights or privileges of Mr. Gupta or any other native of India, whether in the service or out of the service, but there is at stake the right of a Briton in British territory to be judged by his own countrymen. And Government has no claim to deprive us of this ancient and dearly preserved privilege unless it can be proved to us, not that the feelings of a few, no doubt very worthy persons, may be hurt, but that grave inconvenience has arisen to the State through the present law, or that the cause of justice has suffered, and this they 'cannot show.' (Great cheering.)

"No defender of the proposed change has advocated it because otherwise culprits may escape justice, and as for the expense 'or inconvenience arising to the State' I make bold to say, Sir, that Mr. Hope's special private carriage has cost the State more than Mr. Ilbert's Bill, if passed, would save it in the next seven years" (Tremendous and prolonged cheering) "while as for the inconvenience that may arise some fifty or thirty, or even ten years hence, there are many things in the present law which may cause the Government inconvenience some twenty or thirty years hence; but it is good advice not to cross a bridge till you come to it" (cheers and laughter), "and wise statesmanship consists neither in the expunging of harmless anomalies from the statute book nor yet in legislating for the anticipated inconveniences of a future generation, but in giving justice to the present population, for this purpose seeking out and carefully removing those grievances which now oppress the people, due regard being had for the rights of all. (Cheers.)

But, Sir, it is with some surprise that I find native gentlemen of education and position, such as Baboo Kristodas Pal and the Syed Ahmed Khan, who may be said to represent the privileged class of India, advocating the taking away of this privilege from Englishmen because they consider it an anomaly. It is a trite saying that people who live in glass houses should not throw stones, and have these gentlemen not considered that a Government which holds so slightly the privileges of its own countrymen, may, if encouraged, be even less careful of their privileges which have hitherto been guarded even at the cost of grave wrongs being done to the people? (Applause.)

There is, for instance, the privilege of their women not appearing in open court, but giving their evidence even in the gravest cases from a closed in palki or from behind a purdah.

Now, no one will deny that this concession to prejudice may result, nay often has resulted, in grave failure of justice, for by it the magistrate is deprived of the advantage of observing the demeanour of the witness, and you all know how important this is. Many of us even among our own coolies have, I am sure, dozens of times known that a witness was speaking falsely when we could not have told it by merely hearing his voice without watching his face. (Cheers.) But this is a special privilege of the women of the upper classes, which no one has yet proposed to sweep away. Then there is the anomaly of a Government, the nominee of a people whose boast it is that all are equal before the law, telling some of these men that their rank is too high to admit of their appearing in our courts at all. If we are to ride a tilt against anomalies why should this ridiculous one not be knocked over? (Loud applause.) Again we have polygamy, which is peculiarly obnoxious to the feelings of the British nation. Why should this remain, or why should our Government permit to the Bengali what it denies to the Englishman? Slavery for a time existed in India, but it was against the conscience of the British people, so the Government put that down. Why therefore should it allow this grossest form of domestic slavery to continue? (Applause.)

But more repugnant, perhaps to our feelings than even polygamy is infant marriage, with its sequel, child widowhood. Why should this remain, or why should the Government be a party to the perpetual bondage of these

poor women, whose sole sin it is that the boys to whom they are betrothed died when they were yet children? (Hear, hear.)

Our conscience in these matters is strained, but hitherto we have refrained from action, making allowance for the vices and superstitions which the people have inherited from an ignorant ancestry. Shall we continue to do so any longer? I say rather let these gentlemen themselves cast out from their own eyes the beams which now degrade an ancient civilization, and then they may see clearly if any motes need removing from ours. (Loud cheers.)

In the administration of justice it is essential both that the magistracy be upright and that the people have confidence not only in their purity but also in their ability to deal out impartial justice between man and man, and no judge should have his powers extended to men of other nationalities, unless it can be clearly seen that he has gained the confidence of his own. But in this country the contrary is notoriously the case. It is an undisputed fact that the natives do not believe in either the purity or judgment of their own magistrates, that, rightly or wrongly, they believe them to be open to bribery and other personal influences, and that they are not to be trusted at all times to administer justice without fear and without favour, and it is an every day occurrence for them to petition to have their cases removed from the hearing of their own countrymen into the courts presided over by Europeans. For whatever else they may think of us, they believe this, that we try to act rightly and that our magistrates are not only incorrupt but above allowing any outside matter to influence their decisions. (Great applause and cheers.)

For this unbelief in the integrity of their countrymen they may have no grounds. Their magistrates may be most honest and impartial, and may always dispense strict justice. Corruption may be unknown in their courts. Their very police may be above bribery. But, Sir, the people don't believe it, and seeing that this is the case, seeing that their own people don't trust them, why should we be asked to put our necks in their noose? (Vociferous cheers.) No, Sir, I say let them first gain the confidence of their own people, and let them show by deeds as well as words that they are worthy of ours.

Let them emancipate and educate their women, who are now so down-trodden. Let them raise up those inferior castes whom they now so oppress.

Let them abolish from their midst those vices which now so sully the land.

In a word, Sir, let them love liberty and do the right, and then we shall forego this privilege of being judged by our countrymen, for we shall need it no longer. (Applause.)

In conclusion I wish to say that I have faith in the strong conscientious desire of Lord Ripon to act rightly between all races and classes of men in India. And he has promised us that he will give the fullest weight and his most careful consideration to any arguments we may bring before him, I therefore appeal to him to put aside from his mind all the false and irrelevant issues that have been raised, and to try this matter upon the one issue by which, as I have shown, it ought to stand or to fall. (Applause.)

Is the present administrative inconvenience so great and the chance of future wrong so little that Government ought now to deprive their British subjects in India of this privilege which they value so highly, the constitutional right to be judged by their own countrymen? (Cheers.)

If he will answer this question and this only according to his belief, we will acquiesce in the reply, but if our cause be decided on this issue alone I have no fear of the result. (Mr. Doake sat down amidst the most vociferous cheering.)

Mr. Peter, in seconding this resolution, said:

Mr. Chairman and Gentlemen,—In seconding the resolution proposed by Mr. Doake, I have a few remarks to offer which I trust will not be out of place. Since ever India became a part of the British Empire, we are well aware with what a jealous eye the Government has watched over everything affecting native caste, and with what severity any infringement of caste prejudice has been visited, and this more especially since the Mutiny in 1857, the origin of which it is needless for me to remind you of, but which was to a great extent inflamed by a so called infringement of caste. To what a powerful extent the native mind can be influenced for good or for evil, in anything appertaining to this, the memorable time I have above mentioned

is a standing monument; and the ringleaders of the Mutiny well knew the powerful engine they had set in motion when they insinuated injury to caste, and it is needless for me to recapitulate the result; but when we consider that, with such an example before them, Government persists in forcing upon us a Bill which is calculated to offend not only European but also native prejudices, is it any wonder that we are indignant and protest against it? (Hear, hear, and cheers.) That a native of India should be the person to propose it, still further surprises us. Were the higher class of natives found to any number brought up and educated so as to be able to pass the Civil Service examinations, then we should not be so much surprised, but if the records of the Government Colleges and Universities are of any value, we find the larger proportion of natives belong to by no means the highest caste, but are very often Kayats, Kahars; and sometimes Chamars, and we ask how would the high caste Brahmin feel at sentence being passed on him by a Bhunya or a Chamar? The only test at present required for the Civil Service is an educational one; and our contention is that under these circumstances the Amendment Bill is likely to infringe native caste prejudices, and it may be that Government, in pandering to a few, may alienate the feelings of millions of its subjects, and raise a storm which it will find difficult to allay (applause), for we must not forget that the high caste native does not lose his contempt for his low caste brother because he has been educated to Government service. In addition to this the records of the Mofussil courts teem with cases showing the utter incapacity of the natives; as they at any rate are now, for dealing with European cases and the cases of Stephen, and still more lately of Briscoe, are fresh in our memories as witnesses of it. (Loud cheers.) The mischief that has been done by Government in thus endeavouring to force upon the community at large a measure they detest is incalculable, and has opened up all old sores that were getting healed over, and has caused in many instances hasty language to be used which will rankle for many a day and has given rise to a general feeling of distrust which did not exist before. (Applause.) The Commander-in-Chief, in 1872, said that he was jealous of the liberty of the European British subjects in India, because he laboured under great disadvantages. In places where Europeans are numerous there is a chance that there may be European witnesses, but in remote places there is every probability that he may be at the mercy of native witnesses. Gentlemen, I ask what has been done to change matters since then, and could there be a greater authority, or one under whose eye there was more varied experience to quote from, than the leader of thousands of European troops scattered over every portion of the Empire? (Cheers.) And I cannot conclude better than by quoting what Sir James Colville said in 1857 to the Indian Council. "The Council should consider that the feeling of British subjects who expressed so much alarm at being made liable to the jurisdiction of the Mofussil tribunals in tribunal matters, was not so much that of men who felt that persons of any races who committed such crimes as theft or the like would not be fairly tried; but it was a well grounded apprehension of being subjected to those false charges of violence and attempts at violence with which, in regard to natives, the past history of the Mofussil courts was so rife, and which constantly arose out of disputes respecting possession of land." (Applause.) Further on he says: "It did seem to him, therefore, that it would be rash to submit charges of affray for trial to a magistrate who was interested in preserving the peace of the district, and who in exercising his police duties must necessarily be in danger of acquiring some degree of bias against or in favour of particular persons within his jurisdiction." Gentlemen, again I ask you if Sir James Colville dreaded this of one native against another in 1857, how can we expect race prejudices to have died out, and what justice can we look for after the violent expressions some of the so-called educated Bengalees have lately used when expressing their sentiments about us, and whom the Government wish to elevate to a status of equality with us and deprive us of a right inherited since days of the Magna Charta? (Great and repeated cheers met the speaker at the conclusion of this address.)

This second resolution having been put to the meeting by the Chairman, it was carried unanimously.

Mr. A. Spicer then stood up and said :—

Mr. Chairman and Gentlemen,—The resolution that I have the honour to propose for your acceptance is as follows :

“The avowed policy of the Government being to encourage the influx of European capital, so necessary for developing the great natural resources of this country, which, owing to poverty, the inhabitants, who rely mainly upon agriculture, are quite unable to achieve by themselves, the Bill introduced by Mr. Ilbert must do infinite harm, by not only deterring the introduction of fresh capital, but having also the tendency to drive existing industries out of the country, as in all cases foreign capital insists upon having European supervision whose liberty is now for the first time being jeopardised.”

In other words it is the commercial or business aspect of this Bill on which I am about to make a few remarks, not only as it refers to *our* industry, but to that of every other industry carried on and managed by Europeans in this country. The only safe way of examining this Bill in these aspects seems to me to be to argue from the known and assured experience of the past to the future. In all the enterprises carried on by European capital in this country, whether silk, tea, or indigo manufactures, or railways, we find that capitalists have only subscribed their capital when it has been entrusted to and managed by men of their own or a European race. I do not think that any one will question this point, and, that being the case, what are we to think of a Government which, whilst avowing its wish to attract European capital, yet seeks to pass this Bill, which will render insecure the lives and liberty of the men to whom the capitalist entrusts the management of these industries. Security, a certain interest, perfect confidence in the stability of the Government are the first considerations to a capitalist. Tea, silk, and indigo seem to be almost on a par in these respects, the shorter the crop season the greater the danger from this Bill. Consider for a minute how the whole results of a year's working might be jeopardised by arrest at a critical time of the manager and assistant of the tea garden on a false charge, by order of an unscrupulous native magistrate, entrusted with the powers proposed to be conferred on such by this Bill. Such considerations cannot but deter anyone from investing in these enterprises; yet, although Government wish to attract European capital, they are mad enough to attempt to pass this Bill. (Loud cheers.) The European merchants in Calcutta have a great chance in their hands at this time. Let them refuse to tender for the Public Works loan now announced, and thus show to the Government that, having lost faith in its fair and upright dealing as regards Europeans in this country, they will entrust no more of their capital to it. But can *we* do nothing to support our *birth-rights*, not privileges—that is the wrong word? The North Lakhimpore planters have, I see from the papers, announced to the Chief Commissioner their intention to have nothing to do with the local government board if their rights are to be interfered with by Mr. Ilbert's Bill. I am sorry that they have not given the Government a little more time for repentance. (Great cheering.) I would have preferred to have seen them waiting and watchful, but quite as determined, till next August or September, to allow the Government to withdraw the Bill of its own accord, but the Chief Commissioner seems to be anxious to precipitate matters, and has announced, I understand, that the customary allowance made for the improvement of the District will be withdrawn unless these recalcitrant planters consent to sit on the local government board, thus punishing the whole district for what may be the fault of the few. (Applause.) Verily this is Mofussil justice. (Cheers.) I call upon you all, planters of Cachar, to support your comrades in Assam, and if the Chief Commissioner attempts to carry out his threat, that you will do the same thing and let it be known at once that you are equally determined and will allow no consideration to deter you and leave the Government and the Natives to stew together in their own juices. (Vociferous and excited cheering, and voices shouting, “We will, We will.”) Hitherto the non-official Europeans have been looked upon and have to a certain extent considered themselves as an unacknowledged but not the least valuable part and parcel of the Government, but if this Bill is passed, all that is at an end, and the Europeans must look for nothing but what they can extort from the fear of the Government. (Hear, hear.)

Another reason for not passing this Bill, but I am afraid I am departing from the resolution committed to me, is that it is against the practice and principles of this same British Government. In every eastern country in which Europeans are engaged in commerce with the natives of the soil, Government has invariably protected and fostered British commerce by insisting upon fair and equitable courts, ruled or presided over by their consuls or judges specially appointed by them, or in other words Europeans are tried by European judges. I need only refer to the action of our Government in Egypt, China, and Japan to prove this. In Japan only a few months ago, in reply to a request that the interior of Japan should be opened to the foreigners, the Mikado's Government is reported to have said that they were willing to open the country to foreign commerce, if the Europeans would give up their rights to have their disputes with natives of the soil referred to the Consular courts. This, I need hardly say, the Europeans declined to agree to on the plea that native courts are notoriously corrupt, and that in cases between natives and Europeans, a native judge would side with his countrymen. In what, I ask, are the natives of this country superior to the Japanese? Is it in truthfulness? Are perjury and buying witnesses never to be seen here? Are false cases unknown in the courts of India? No, to the disgrace of this country (and to a certain extent of the Government), I cannot find one single quality in which the natives here are superior to the Japanese. (Applause and cheers.) Such being the case, to what are we to attribute the action of the Government in seeking to place Europeans, Eurasians, and their wives and families, under Native magistrates? Is it to be attributed to a false philanthropy, or to ignorance of the natives of this country that is absolutely criminal? The Viceroy and his mouthpiece, Mr. Ilbert, may be in ignorance, having only been a short time in this country, but what are we to think of the highly placed and still more highly paid official members of Council, who are reckless of consequences to others, knowing, as they must, that if this Bill passes it will place the lives, liberties, and property of their countrymen at the mercy of a cringing and deceitful race? (Applause and cheers.) From these considerations I draw the conclusion that if this Bill passes, there will be no security for the capitalist, and he had better look elsewhere for the employment of his capital. (Loud and prolonged applause.)

Mr. C. J. Bell, in a few appropriate remarks, begged leave to second Mr. A. Spicer in proposing the above resolution.

The Chairman then put the resolution to the meeting and found it unanimously and heartily carried.

Mr. C. Menzies, after an able and eloquent speech, proposed the next resolution, which reads:—

"It should never be forgotten, that one of the mainstays of British supremacy, is the belief, almost universal, that impartial justice is dealt out to all alike; but this condition will no longer be continued, for the Europeans declare, with one voice, they can have no confidence in the proposed new tribunals, and their decisions will never be accepted. The danger involved in this state of affairs can readily be perceived, and surely the accused ought to have a voice as to the tribunals by which he is to be tried."

Mr. E. Livermore seconded this resolution in the following speech, during which he was frequently cheered and applauded.

Mr. Chairman and Gentlemen,—The resolution before the meeting draws attention to the jeopardy in which British supremacy in India will be placed should the Government persist in its ill-advised policy by passing Mr. Ilbert's Bill in the teeth of an opposition such as no Indian Government has hitherto experienced. That one of the mainstays of British supremacy in this land is the impartiality with which justice is administered to all alike, irrespective of class or creed, is an undoubted fact, and the consequence of this is seen in the high respect which natives have for our courts of law, and the ready way in which they appeal to those courts for redress in cases of injury or wrong suffered. But though we can readily admit that natives have learnt to appreciate that impartial justice which is ever meted out to them at the hands of the representatives of law and order, we cannot allow that they are yet morally capable of understanding what true justice is. They have no inborn sense of fairness, they fail to see why right should prevail and bribery

and corruption have no influence with their judges. Until this dark moral defect is eradicated, they can never be fitted to sit in judgment on Britons, whose sense of justice has in the course of ages almost grown into an instinct. It is in no vaunting spirit that, at a crisis such as this one, a Briton may well claim that his countrymen are endowed with an innate sense which is not the mushroom growth of one generation, but during a gradual descent for many generations past has from primitive ideas of justice developed into that high moral sense of which I speak. On the other hand a native of India, though belonging to a land which was old in history a thousand years before Great Britain had emerged from barbarism, has descended from a race whose mistaken ideas of morality have made no advance towards improvement for successive centuries, and even now, when years of European rule might have been expected to have elevated the moral tone of the nation to some slight extent, very little improvement is noticeable, and lies and deceit are the daily experience of all Europeans who have much intercourse with natives. It is not in the nature of things that this moral defect can be counteracted by simply cramming an individual native with more or less useful knowledge. Though he may combine in himself all the learning of the wisest men of the age, he cannot change his nature, nor can we, whom our paternal government is seeking to subject to his authority, forget what blood flows in his veins.

It is thus, Sir, that we have to declare to-day, and that with no uncertain voice, that we can have no confidence in the proposed new tribunals, because we can have none in those natives who are to preside over them; in fact, we doubt the integrity and have no confidence in the impartiality of our would-be native judges, and in so far as this is the case, we feel with bitter sorrow that the hitherto impartial administration of justice in this land is at stake, and with it the supremacy of British rule in India. Further, we can never accept the decisions of the natives, as they have little or no knowledge of our habits and our motives of action. They are not our equals, and the fact of this agitation shows that they neither have, nor desire to have, any sympathy with us.

If, in the course of years, the gradual education of the people of India shall have raised the masses to a higher moral status than they now occupy, it may be then time to examine whether their devotion and loyalty to the British rule will fit them for rights more nearly approaching to those of Englishmen, but until that time comes, the Government are doing no good to natives, and do much harm to Europeans, by even proposing to concede to the former powers which they are in no way prepared to wield for the benefit of the realm. That there are other mightier reasons why Europeans should not be subject to the jurisdiction of native judges we must all feel, but it is quite in accordance with the fitness of things, that a Government which has so little acquaintance with the wishes and feelings of the various races it governs, as to mistake the clamour of a few educated Baboos and native editors for the demands of 250 millions of people, and contemptuously ignore the passionate and heart-felt protest of ninety-nine per cent. of its European subjects, should be so blind to the teachings of the past, as to deliberately place in the hands of a subject race so dangerous a weapon as judicial authority, which at any time may be turned against their rulers.

It is deeply to be regretted, now that the insatiable ambition of a certain class of the native community is making itself apparent, that at the time when native magistrates in Presidency towns were granted the power now demanded for their brethren in the Mofussil, the concession of these powers was not more strenuously opposed. Even if the European opposition had not succeeded it would have shown the Government of the day what English opinion on the subject was, and it would have had the effect of teaching the native population what the line of demarcation was, over which they might not step, in their search for their imaginary rights. That little or no harm has come of granting those powers to native Presidency magistrates is more due to the fact that in each Presidency town there is a powerful and watchful English press, and a large European community, than any inherent qualities in the judges themselves. The absence of these opportunities for criticism from most Mofussil courts is one of the strongest reasons against this measure, and would inevitably heighten that suspicion with which we

cannot but help looking upon all native doings, especially where legal proceedings are concerned.

With one exception of the powers granted to native Presidency magistrates over Europeans some years ago, this proposed Criminal Procedure Amendment Bill is the first time, since the establishment of the British constitution on its present firm basis, that the absolute right of a Briton to be tried by his own countrymen alone has been called into question, and hitherto this right has been held as inviolable in every colony of Her Majesty's vast dominions as in England.

Englishmen cannot but feel that the Government of India are acting in an unconstitutional manner in endeavouring to take this sacred privilege from us. It is a matter of the deepest import to all Europeans, but especially to those who have yet a long career before them in the Indian Mofussil, that the absolute purity of the justice administered in the Mofussil courts should be guaranteed in the future as it has been in the past, but no such guarantee can be accepted by us, who will come under the power of these courts, that does not re-affirm the inalienable right of Britons to be tried by their own countrymen.

What conclusion can we come to, taking the strange action of the Government with regard to this Bill into consideration, but that it is wilfully callous to the true interests of England in the East, or, worse fault still for a Government, absolutely ignorant of what those interests are. Our remedy must be to oppose with all our strength this deliberate attack on British supremacy in India, and if the Bill pass, to anticipate the inevitable result of the retrograde policy of a Radical Government by joining *en masse* those volunteer corps which the Government itself acknowledges are necessary, that, when the broad and statesmanlike policy under which we are suffering shall have worked out its natural result, we shall be able to assist the powers that be with our services, when in the hour of danger the material increase of the standing army in India will have become an absolute necessity.

The above resolution was then put to the meeting and carried unanimously, and with cheers.

Mr. S. D. Jackson in a short but telling speech proposed the next resolution, which reads:—

This meeting cannot accept as either satisfactory or convincing the reason given by Government for introducing the change, nor do they believe in the finality of the present policy. The present Government is not able to bind its successors, and if the abolition of anomalies be the end in view, it is quite impossible that things can stand where they are. India was won by conquest, and the fact that after the lapse of over a century the country is still held, and its 250 millions of inhabitants are governed, by a mere handful of Europeans incontestably shows both the justice of their rule and the great prestige in which the English name is held. That such a Government should preach the perfect quality of the races, or should do anything to lower the prestige of the Europeans, out of a hankering after theoretical symmetry (in the administration of the law), must appear to all nothing less than a political blunder of the most serious kind, which may involve consequences that all will deeply rue.

This resolution being duly and well seconded by Mr. P. S. Mackintosh, it was put to the meeting by the Chairman and carried unanimously.

In a few appropriate words Mr. R. White then proposed the following resolution:—

That our warmest thanks be tendered to the European community of Calcutta for the able and unselfish help they are giving to their countrymen in the Mofussil in opposing the proposed alteration in the Criminal Procedure Code and especially to all those who supported and sympathized with the meeting held there on 28th February 1883.

This resolution was duly seconded by Mr. C. S. Walliker, and on being put to the meeting by the Chairman, it was carried unanimously with repeated and enthusiastic cheers.

Mr. A. Stewart then said:—Mr. Chairman and Gentlemen,—In rising to propose the resolution which has been assigned me, I do so with pleasure, as I feel sure you will be only too glad to concur with me. At this time, when we have had this obnoxious Bill thrust upon us where would we have

been had it not been for our free and independent English press, which has well vindicated its character as an honest and upright organ of public opinion? Foremost amongst the newspapers of India I beg leave to mention the *Englishman* as the one first to draw attention to the dangerous features of the proposed amendment (cheers); and with one exception (groans for the *Statesman*) the remainder of the journals followed the course taken by it. I would now propose the following resolution:—

“That our best thanks be tendered to the *Englishman* and other newspapers, for their able and manly opposition to the proposal to deprive us of our cherished and inalienable right of being tried by our countrymen.”

Dr. A. J. M. MacLaughlin seconded this resolution, and said,—Mr. Chairman and Gentlemen, I have much pleasure in seconding that resolution. Every European, who has any interests in India, should be for ever grateful to the *Englishman* (a voice, “and the *Statesman*,” derisive cheers,) for the very able way that paper has been endeavouring to defend us in regard to this Bill. If only some of the Home papers would take the matter up as warmly, and let our countrymen know clearly the exact nature of this Black Act, and the extent to which it will tend, if it become law, to jeopardize our liberty, I am sure there would be as strong a feeling evinced against it there, as is now shown by Englishmen in this country. (Cheers.)

Englishmen must, indeed, have changed very lately, if they will remain silent when they know that an attempt to crush us, their fellow-countrymen, is being made by those they have appointed to look after our interests and to be our rulers. Is it likely that they will allow us to be deprived of our liberty and our rights, merely to gratify the aspirations of a few natives, or allow us to be the subject of a mere experiment, which a few eccentric political theorists wish to make, when it is evident to the, I might say, whole European population of India, and to a large number of natives, that such an experiment must be attended with complete failure and end in insecurity of life and property? I should say certainly not, and for these reasons it seems to me that what is now necessary to secure success in our cause is to ventilate this matter fully throughout the United Kingdom, through the assistance of the European and Anglo-Indian Defence Association, and let our friends and fellow-countrymen at home know the extent of injury to us, without any benefit to the natives, which the passing of this most unjust, unnecessary, unfortunate, and injurious Act would entail. (Cheers.)

The above resolution being put to the meeting it was carried unanimously, with cheers for the *Englishman* and groans for the *Statesman*.

Mr. A. Odling then rose and said in effect that he had much pleasure in proposing the next resolution, for he was sure it would commend itself to the meeting. And he would beg to draw their attention to what had been said in Calcutta and elsewhere that, besides subscribing funds, how much they could help our cause, if those who had relations or friends at home in influential positions, or members of Parliament, would keep on writing and stirring them up to agitate, and deeply interest themselves in our favour. And with these few remarks he would beg leave to propose the next resolution.—

“That we now open subscription lists in aid of the Europeans and Anglo-Indian Defence Association, and pledge ourselves to support this Association both with funds and by every legitimate means in our power.”

Mr. H. G. A. Thornton seconded this resolution, and on its being put to the meeting by the Chairman, it was carried unanimously, and with loud cheers.

The Chairman, in proposing the next resolution, said:—

Gentlemen,—Before proposing the next resolution I have a few remarks to make. I have listened with great pleasure to the able way in which the previous speakers have proposed, seconded, and supported the foregoing resolutions. And there can be no doubt, I think, that such a large assemblage of the European community, so ably, unitedly, and determinedly setting forth their strongest protest against Mr. Ilbert's Bill, must have considerable weight when their proceedings are laid before the Government. It will be seen how keenly we feel that our good Government, to which we could not be more loyal (cheers), has so illiberally been trying, and trying in the dark, to deprive us of a cherished right, the possession and exercise of

which are doing no one in India the slightest harm; but rather, in fact, doing India good. No further back than last September Government took a step in the right direction, and very liberally published that it thought the public should have greater opportunities and time given to discuss and study any Bills which were under the consideration of the Legislative Council. And this was with the avowed object to enable that Council to mould such Bills as much as possible in accordance with public reasonings and request. I have no doubt whatever that Government was sincere when it published that it thought the time had come when it should, to a much larger extent than hitherto, be guided by and take counsel from the community at large when making laws and regulations for them. And therefore I have the greater hope that this very objectionable and dangerous Bill will be withdrawn now, when it is clearly seen that there is the completest possible unanimity of voice against its being passed into law, amongst those it would so vitally and injuriously effect. The ablest men of our community in India are strongly opposed to it, and the more time there is given to discuss the Bill the more obnoxious and harmful it appears, and the stronger and more combined is the opposition to it. So that it cannot be hoped that the great outcry made against it is of a merely effervescent nature that time will calm down and make inert. No, I rejoice to say that this generation of Europeans in India has not yet been, either in mind or body, so enervated as to languidly and unconcernedly submit to a trampling down of its inherited and inalienable (whatever Mr. Ilbert may say to the contrary) rights as British subjects of their dearly loved Queen. (Cheers.) I now beg to propose the following resolution:—

That the proceedings of this meeting be submitted to His Excellency the Viceroy and Governor-General in Council, through the Indian Tea Association of Calcutta, for his due and careful consideration, with the earnest hope that the proposed Bill for the amendment of the Criminal Procedure Code may be withdrawn.

Mr. G. M. Loch stood up, and after making a few appropriate remarks begged to second this resolution. The Chairman then put it to the meeting, and it was carried unanimously and with great cheering.

Mr. H. Weir then in very eulogistic terms proposed a vote of thanks to the Chair, and this being warmly seconded by Mr. E. S. Elliot, it was carried amidst ringing cheers.

After the Chairman had returned his thanks to the meeting for this motion, he warmly thanked them for having supported him so well, and said the meeting could not have passed off more orderly or more successfully.

The National Anthem was then sung with the greatest enthusiasm. Before separating the Deputy Commissioner expressed a wish to address the meeting on the question of volunteers, as he was now the Commandant of the lately formed Cachar corps, and that question had been brought up in Mr. Livermore's speech. But before taking up the question he said in effect that he had had the greatest pleasure in hearing the speeches that had been made, that he was extremely pleased with the tone that pervaded all the speeches, as well as all the members of the meeting; that he was sure if Lord Ripon himself had been present, he could not have objected to one single word that had been said, and that if all the meetings held throughout India had shown as much good temper and spoken as effectively, he believed the result would already have been different with regard to the Bill. The meeting, after a few further remarks about the volunteers, then dispersed.

(Signed) WM. AITCHISON, Chairman.

ENDORSEMENT by OFFICIATING UNDER SECRETARY TO GOVERNMENT OF INDIA, Home Department (No. 709, dated 21st May 1883).

TRANSFERRED to the Legislative Department for disposal.

(Signed) G. S. FORBES.

No. 71.

LETTER from the ASSISTANT SECRETARY to CHIEF COMMISSIONER, Assam, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department (No. 1125).

Dated 17th July 1883.

I AM directed to submit the accompanying memorial from the European residents of the Lakhimpur district against the passing of the Bill to amend the Criminal Procedure Code.

I have, &c.,
(Signed) W. C. MACPHERSON.

ENCLOSURES REFERRED TO IN PRECEDING LETTER.

LETTER from the JOINT HONORARY SECRETARY, INDIAN TEA ASSOCIATION, Dibrugarh, to DEPUTY COMMISSIONER, Dibrugarh (dated 4th July 1883).

I HAVE the honour to request that you will kindly forward to the Chief Commissioner of Assam the enclosed petition. (with original signatures attached) regarding the Criminal Procedure Amendment Bill.

I have, &c.,
(Signed) J. A. H. JACKSON.

MEMORIAL of EUROPEAN BRITISH SUBJECTS of DIBRUGARH (dated 16th April 1883) to the CHIEF COMMISSIONER OF ASSAM.

THE humble petition of Her Majesty's European subjects, residents of the Dibrugarh and neighbouring districts,—

SHEWETH,—

That at a public meeting held at Dibrugarh on the 21st February 1883, to consider the amendment proposed by the Government of India to the Criminal Procedure Code as far as it relates to the exercise of jurisdiction over European British subjects, the following resolution was carried unanimously :—

That this meeting indignantly protests against the most ancient privilege of a Briton being sacrificed merely for a political sentiment, and are strongly convinced that, especially in Assam, which differs greatly from other parts of India, both in being so isolated from the influence of public opinion, and owing everything to European enterprise and capital, such legislation as proposed will not only vitally injure European interests, but, by debarring future capitalists and alienating existing ones, will stop the progress of the province, and is even now aggravating, and will certainly revive, that antagonism and friction of races which has of late years remained dormant.

That at a subsequent meeting held at Dibrugarh on the 26th March 1883, both of which meetings were attended by a large majority of your memorialists, either personally or by proxies, it was unanimously decided that a statement of the opinions and feelings thereat expressed be submitted to the Chief Commissioner, and that he be memorialised to embody them in his final report to the Supreme Legislative Council on the said amendment, for the information of the Government of India, as being the mature and deliberate opinions of a community vitally interested in the welfare of the province of Assam.

It would be an act of supererogation to recapitulate here the numerous able and conclusive arguments advanced by many of the most eminent statesmen and lawyers of the day, both in England and in India, against this proposed Bill, or to do more than cordially acknowledge the strong and daily increasing expressions of sympathy now being generally given vent to from one end of England to the other with the opponents in India of this dangerous measure—the sympathy of those who will be the final judges of the policy of the Government.

Your memorialists at present desire only to submit a few of the more special claims which the province of Assam possesses over and above the rest of India, and which should entitle it to be excluded from the action of the proposed Bill:—

I.—The topography of Assam, with its vast extent of frontier, vividly displays the natural insecurity of the province. On the north, the south, the east, and even parts of the west, it is surrounded by hostile and warlike savage tribes.

The existing military force would be numerically inadequate to protect the province from either external feuds or internal disaffections, were it not for the assistance of an organised and efficient civil magistracy acting in concert with them, and supplying them with all possible information.

It is a matter for grave consideration whether, in a critical position, on which the lives of thousands might depend, a Native magistrate, however efficient, would possess the confidence of his European coadjutors, and it is certain that he could not be endowed with a sense of that *esprit de corps* so strong amongst all Englishmen when placed in positions of danger in a foreign country.

II.—The isolated positions occupied by the planters of Assam render them quite helpless and defenceless, as compared even with the European inhabitants of *sadr* stations, against the insidious attacks of irresponsible and unscrupulous Natives, who would have countless opportunities offered them in the court of a Native magistrate for fabricating false charges; and thus be enabled to harass the existence, derogate from character, waste the time, and thus cause great pecuniary loss to the planters. The fabrication of false charges is a far from uncommon mode of revenge with Natives even under the present *régime*.

To an ordinary person, unaccustomed to life on a plantation, it is inconceivable what a very serious pecuniary loss can be entailed on a tea-plantation at certain periods of the year by the withdrawal of the manager even for a few days. This would be placed in the power of every coolie able to pay a few rupees, and thus gratify his spite by instituting a false case against his employer. There is no check to a recurrence of such cases, which might remain buried in oblivion, for there is no outlet to public opinion in Assam; the planting interests have no representatives with the Government; and a recent case has shown that, where a most serious injustice was committed by an incompetent Government official on an European, no redress was obtainable. It is a fallacy to argue that a Native gentleman would have acquired sufficient knowledge of European character and discernment to be capable of judging fairly in cases of this kind through having resided and studied for a few years in England, for "*cælum, non animum mutant, qui trans mare currunt*."

III.—In the minutes of the various Local Governments, issued in May 1882, and in all the speeches and letters since published in favour of this Bill, it has been invariably admitted that it would be most regrettable and greatly to be deprecated should anything be done likely to lead to a revival of the race-prejudices and antagonistic feelings which have of late years been moribund. You, Sir, have forcibly expressed yourself on this point, and stated your belief that these feelings have abated since 1872. Such also was the opinion held by Sir Stuart Bayley; but he has since admitted that he had reckoned as dead feelings which were in reality only dormant.

Your memorialists are in duty compelled to bear witness to existing facts; and they reluctantly state that these feelings of race-antagonism have not only been revived, but are at present most bitter and intense, and daily increasing in a most deplorable manner. The cause is not difficult to discover. A feeling of insecurity has been created by the action of the Government, and these are but the natural consequences.

This province is held merely by the prestige enjoyed by the European inhabitants; the planters are virtually at the mercy of their coolies, leaving out of the question the aborigines; the few police in the districts, such as they are, are quite incapable of quelling even the smallest and most insignificant riots. It is by his prestige alone that the planter keeps his labour-force docile, obedient, and contented. Deprived of this, as he undoubtedly would be in the eyes of an ignorant and bigoted race were he to be tried by

one of their own countrymen and on a footing with themselves, not only his safety, but that of his wife and family and property, is done away with. Your memorialists do not speak from sentimental theories, nor from even a casual or imperfect insight into Native character, but many of them from a lifelong intimacy with the daily habits, customs, and feelings, both in times of contentment and in times of excitement, of their labour-population. It can be no cause for wonder that, under the circumstances, arousing, as they do, the strongest, deepest, and most sacred feelings of humanity—for what is more sacred to a man than the safety of his own family?—that a firm and unalterable desire has been evinced to endeavour to uphold the existing law, and to enlist the sympathy and assistance of the Chief Commissioner on our behalf in so doing.

Your memorialists may state that they deprecate the action of those gentlemen who have refused to act in concert with the local self-government boards, and also the action of those volunteers who have stated their wish to lay down their arms, as only tending to increase existing dangers and embarrass the action of the Government.

IV.—Your memorialists, who are private investors of capital, shareholders and managers of tea-companies around Dibrugarh, alone represent a capital of 125 lakhs of rupees invested in this comparatively small extent of country, and which entail an annual influx and efflux of 30 lakhs of rupees.

And they are, on mature deliberation, most thoroughly convinced that, should the Amendment Bill be passed into law, the sense of insecurity to property thereby created will be of itself sufficient to prohibit any further investment of capital in the province.

Existing interests must be upheld and continued; but as no industry can remain stationary, and what does not progress must by nature's own laws retrocede, the inevitable conclusion is that the tea-industry of Assam will with the lapse of years gradually disappear. This opinion has not been formed rashly, nor without serious and anxious deliberations, by those who have themselves invested capital. It is not difficult to foresee what the result will be to the province and to the many thousands of labourers exported from lives of poverty and starvation in their own country to comparative wealth and ease here. Swamps, poverty, and death will take the place of opulence, health, and increasing population.

Such are a few of the more salient points which your memorialists wish to bring under your notice, and which show the special claims of Assam to be excluded from the action of the proposed Bill.

And your memorialists pray that you will represent these views to the Supreme Legislative Council of India.

And, as in duty bound, your memorialists will ever pray.

(Signed)

H. E. HANNAY,

A. W. MADDEN,

ALFRED C. SWEETING,

and 66 others.

} Committee of Defence
Association, Dibrugarh.

No. 72.

LETTER from the OFFICIATING SECRETARY to CHIEF COMMISSIONER, British Burma, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department (No. 286-12L).

Dated 16th July 1883.

IN continuation of my letter No. 282-12L, dated 16th instant, I am directed to submit, in original, a memorial addressed by a considerable number of the European and Eurasian residents in this province to his Excellency the Viceroy and Governor General of India, praying that the Bill to amend the Code of Criminal Procedure may not be proceeded with.

I have &c.,

(Signed) E. S. SYMES.

MEMORIAL of EUROPEAN BRITISH SUBJECTS of BRITISH BURMA to His Excellency the Most Noble the MARQUIS OF RIPON, K.G., P.C., G.M.S.I., Viceroy and Governor General of India.

MAY it please your Excellency—

WE, the undersigned inhabitants of Rangoon and other places in British Burma, beg most respectfully to present to your Excellency the following petition :—

Your petitioners, as European British subjects, are by birth entitled to the privileges contained in the great charters of English liberty, the most cherished of which is the right to be tried by their peers.

Your petitioners, or their fathers before them, have left the comforts of their own country, and carrying their lives in their hands, through battle, mutiny, and disease, for the honour of their country's name, have assisted to establish and maintain the Empire of Her Majesty in India, which is the greatest of her possessions.

Your petitioners are pained beyond expression to find that the Government of India now seeks to enact a law empowering men of an alien race—men whose feeling towards your petitioners are necessarily embittered by the very acts by which Her Majesty became the ruler of this land—to sit in judgment and pass sentence upon them.

Your Excellency is well aware that all Eastern nations attach the greatest importance to the outward display of respect which they demand for their women, whatever their condition or caste; and the Government of India has acquiesced in exempting Native women of certain classes from appearing in civil courts of justice before European or other judges. Yet now it is proposed to expose Englishwomen, who have been brought up in honour and held in deserved respect, to the risk of legal processes before Native judges in cases which may be instigated by Natives actuated by most unworthy motives.

Your petitioners feel that the proposed alteration would be particularly inexpedient in British Burma. This province has but very recently been subjected to British rule; and although that rule has been attended with the happiest consequences to the mass of the population, there still remains amongst them a strong tendency to sympathise with the lawlessness at Mandalay; and your petitioners are fain to believe that any hasty transfer of power to the Natives of this province might lead to disastrous consequences in times of political trouble in any other part of the Empire.

Your petitioners submit that the Imperial requirements of the time call for no alteration in the present law of Criminal Procedure such as the Bill before your Excellency in Council aims at, and which your petitioners pray may not be proceeded with.

And shall ever pray, &c.

(Signed) W. WEDDERMANN,
and 333 others.

No. 73.

OFFICE MEMORANDUM by PRIVATE SECRETARY to HIS EXCELLENCY
the VICEROY.

Dated 28th July 1883.

TRANSFERRED for disposal to the Secretary to the Government of India in the Legislative Department.

(Signed) H. W. PRIMROSE.

ENCLOSURES REFERRED TO IN PRECEDING MEMORANDUM.

LETTER from the SECRETARY, NATIVE ASSOCIATION, Kalka, to SECRETARY TO His Excellency the VICEROY and GOVERNOR GENERAL OF INDIA (dated 25th July 1883).

I most humbly and respectfully beg to submit herewith the enclosed memorial on behalf of the inhabitants of Kalka and its vicinities praying for a consideration in the famous Mr. Ilbert's Bill introduced into His Excellency's Legislative Council on the 19th February last for the purpose of amending certain grave defects existing in the Code of Criminal Procedure at present in force in this country, and beg your Honour will, with an eye of mercy, present the said memorial to His Excellency the Viceroy for His Excellency's favourable consideration and support.

And, in duty bound, I, your Lordship's obedient and humble servant, will ever pray.

(Signed) KHUSHEE RAM.

MEMORIAL of INHABITANTS of KALKA (dated 25th July 1883) to His Excellency the Most Noble GEORGE FREDERICK SAMUEL ROBINSON, Marquis of RIPON, K.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India.

MAY it please your Lordship—

The humble memorial of the inhabitants of Kalka and its vicinities most respectfully sheweth—

That your memorialists observe with much satisfaction the Bill introduced into your Excellency's Legislative Council, on the 19th February last, for the purpose of amending certain grave defects existing in the Code of Criminal Procedure at present in force in this country. These defects had been for many years past the subject of very considerable complaints, which found formal and pointed expression in your Excellency's Legislative Council in March 1882, when the present Code was passed, and when an amendment having the same object as the present Bill was brought before the Council, and withdrawn only upon a promise given that the subject would receive early and more careful consideration than could be bestowed on it at that time.

2. Your memorialists beg at the very outset to disclaim any desire for the removal of any privileges enjoyed and really valued by any particular class of Her Majesty's subjects, when those privileges are such as involve no injury to any other class. But your memorialists hold that the privilege continued to British-born subjects of Her Majesty under the present Code of Criminal Procedure is one which, besides being singular as the only class-privilege recognised in the administration of the criminal law, does involve injury, and very serious injury, to other classes of Her Majesty's subjects in this country; and they further hold that the curtailment of that privilege as attempted in the Bill now under discussion is in its extent the slightest that could be looked upon as at all meeting the circumstances of the case.

3. The administrative inconveniences which have been occasioned by the maintenance of the privilege in question; the inconvenience, not to say injustice, which parties to and witnesses in criminal proceedings in which European British subjects are the accused persons are put to in consequence of that privilege; the mark of inferiority which it implies on one gradually increasing class of officers in Her Majesty's service, and the occasional injustice which must be expected to occur in the distribution of the various administrative districts to those officers if the said privilege is maintained untouched; all these are considerations which, taken together, ought, your memorialists submit, to strongly weigh with the British Government in India, having regard to the policy of that Government as often authoritatively declared, and nowhere in better or more forcible language than in the

great Proclamation of 1858, in which Her most Gracious Majesty used the following memorable words:—

“ We hold ourselves bound to the Natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil.” And again, “ it is our earnest desire to administer its Government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And may the God of all power grant unto us and to those in authority under us strength to carry out these our wishes for the good of our people.”

4. Your memorialists gladly admit that the principles above referred to have in a general way, and to some extent, practically guided the Government of our country, and the history of British Indian administration in the past exhibits a constant, if somewhat slow, progress of equalising the status before the law of all classes of Her Majesty's subjects. Your memorialists accordingly consider the Bill in question as only one short step in the direction in which British policy in this country has uniformly progressed. And they can therefore only deplore the spirit of partisanship which the Bill has roused in a section of Her Majesty's subjects. But they cannot help feeling that that spirit has not been roused by this Bill alone, and that behind that spirit lies a strong antagonism to the whole policy of the present Government of India,—a policy which, your memorialists submit, is not only just and beneficent in itself, but is also in consonance with, and is the proper outcome of, principles which have been laid down for upwards of half a century by successive Parliaments, Secretaries of State for India, and the Government of India, and, above all, calculated to promote the best interests of both England and India.

5. Your memorialists maintain that, when the principle is once admitted that the Natives of this country ought to be appointed in gradually increasing number to posts in the service of Her Majesty, which in their ordinary functions include the trial of offences committed by European subjects, a very strong case is made out for such legislation as is attempted in this Bill. It is the duty of the statesman to provide in due season for an adaptation of the whole administrative machinery to that principle before an overwhelming number of cases actually arise in which such adaptation may be specifically required.

6. Your memorialists would crave leave to say a few words upon certain specified points made in connection with this subject.

7. The existence of this anomalous and invidious distinction which the Bill seeks to remove is sought to be justified by the assumed incapacity of Native magistrates to deal with cases in which British-born subjects are concerned. The grounds alleged for this assumption are—(1) that Native magistrates are likely to be swayed by race-prejudices; (2) that they are not sufficiently acquainted with European manners and customs; (3) that much perjury prevails in India; (4) that false and trumped-up charges are often brought against innocent parties; (5) that the aid of experienced counsel cannot be had in the Mufassal.

8. *First*, as to race-prejudices, it must be remembered that the magistrates who are to be entrusted with jurisdiction over Europeans will of necessity be tried and trusted servants of Government, who have gone through years of training, and who have by their qualification attained high positions, such as those of district magistrates or sessions judges. The other persons who are eligible for these extended powers are those covenanted civil servants, assistant commissioners or cantonment magistrates only who have been especially selected by Government to be justices of the peace.

9. Your memorialists would respectfully submit that it is impossible to suppose that any one of these magistrates—most of whom must necessarily have been educated in England, and have thus come into social contact with Europeans—could entertain any hostile prejudices against the English people. Surely the blessings of English rule—which no one appreciates better than the educated Natives of India—are calculated to produce not a feeling of hostility, not a feeling of prejudice against the English people, but rather a feeling of respect, gratitude, and admiration. The idea, therefore, of wilful

injustice must, your memorialists submit, be dismissed as a gross and unjustifiable libel, unfair alike to the English Government in India and to the Native magistrates.

10. Wilful injustice being thus out of the question, is there any reasonable ground for supposing that Native magistrates are more likely to be unconsciously swayed by race-prejudices than their European colleagues? In considering this question one must not forget the high training the magistrates in question must have received before they are entrusted with the powers proposed to be given under the Bill, nor the fact that Hindu magistrates try every day questions in which Hindus, Pársis, and Mussulmáns may be opposed to each other, and *vice versa*. Now, it has never been alleged that Hindu, Mussulmán, or Pársi magistrates unjustly convict persons belonging to a different race or creed from their own. Then, why should it be supposed that these magistrates would be unjustly influenced by race-prejudices in the case of Europeans only?

11. As to want of acquaintance with European manners and customs, your memorialists submit that this is not true in the case of Natives who have been educated in England, or even those who have received a high English education in this country, and who have for years mixed with Europeans in their own country and in India on a footing of equality and friendship. On the contrary, your memorialists would submit that covenanted Native civil servants are likely to be better acquainted with European manners and customs than many European magistrates are, and can generally be, with the habits and customs of the Natives of this country.

12. In regard to perjury and false and trumped-up charges, and the absence of counsel, surely experienced Native magistrates are as well able to deal with these difficulties as their European colleagues, or rather more from their intimate knowledge of Natives. These difficulties are not alleged to be confined to European cases only, but to occur in all cases. But, if the magistrates are able to detect perjury and to discover trumped-up charges, even in the absence of counsel, when levelled against the Natives of this country, surely they would be equally able to detect them when they have to try cases in which Europeans are concerned.

13. And your memorialists submit that the multiplication of railways and the telegraph has made it easy for parties to engage counsel, or to communicate readily with the Government or the High Courts, which could not have been done in former times; while the High Courts in India have now been invested with the ample powers to transfer cases on all occasions where such a step may seem desirable. If, then, these magistrates are admittedly competent to administer justice to the millions of India, it can hardly be seriously argued that they are unfit to deal with the few cases in which Europeans are concerned. Your memorialists cannot believe that Natives are more governed by race-prejudices than Europeans. They think that quite the contrary is the fact.

14. Under these circumstances, your memorialists would respectfully ask whether it is just, dignified, or politic to have one set of scales for administering justice to the Natives of this country and quite another for Europeans; whether our courts are good enough for trying questions of life and death for the 200 millions of Her Majesty's Indian subjects, but not fit to try even the most trivial questions in regard to Englishmen; and whether the present exceptional and anomalous provisions of the law are not calculated to lead the Natives of this country to believe that they are intended more to screen European offenders than to secure impartial justice?

15. Lastly, your memorialists emphatically deny the gross misrepresentation that the Natives of this country care nothing for this Bill. They, on the contrary, assert that they are keenly and deeply interested in it. They have watched, and will continue to watch, its fate with the most intense anxiety. In the opinion of your memorialists, the principle involved in this Bill is of the most vital importance to their interest and welfare. The question really is, whether the Natives of this country—no matter what their qualifications, their learning, their experiences, and their service, in the cause of their country may be—are always to be treated as an inferior race of men; whether that inferiority is constantly to be marked by invidious and galling distinction? And this question, as already indicated, has now to be con-

sidered as part of the still larger question—whether India is to be governed upon the righteous principles which were announced by Her most Gracious Majesty, and have guided your Excellency's enlightened policy, or upon those of the opponents of this Bill?

And, in duty bound, we, your Lordship's obedient and humble subjects, will ever pray.

(Signed) R. DILIP SINGH BAGHAT,
and 559 inhabitants of Kalka and its vicinity.

No. 74.

From VICE-PRESIDENT and HONORARY SECRETARIES, SATÁRA SARVAJANIK SABHA, to the SECRETARY TO THE GOVERNMENT OF INDIA, Legislative Department.

No. 6, dated 10th August 1883.

WE have been directed by the managing committee of the Satára Sarvajanic Sabha to submit the following representation on Bill No. 8 of 1883, a Bill to amend the criminal jurisdiction of Native magistrates, for the consideration of the Legislative Council, and to request you to lay the same before it.

1. The Sabha has been watching with deep interest the progress of the Bill mentioned above since the time the Honourable Mr. Ilbert begged leave of the Council to introduce the same.

2. The principle of this Bill is of the greatest importance and significance, and is in thorough accord with the traditional policy of the Indian Government, with the declared views and acts of the great Anglo-Indian statesmen who have founded and consolidated this great Empire, with the repeated instructions of the Court of Directors of the East India Company, with the Acts of British Parliament on the subject of Indian policy, and lastly with the generous promises and pledges of Her most Gracious Majesty, the Queen, as solemnly given in the Royal Proclamation of 1858.

3. The equality in the eye of the law of all Her Majesty's Indian subjects—whether British-born or otherwise—has been one of the main principles underlying the policy and government of this country by the late East India Company, and it has been accentuated, above all in the Royal Proclamation on the assumption of the direct rule of this great country by Her most Gracious Majesty.

4. The greater and more extended employment of the Natives in the government of their own country, which has been promised, which is being carried out partially, and which policy and economy alike will force the Government to carry out more fully, demands that the Natives shall be under no disqualification, by reason of their caste, colour, or creed, in the exercise of powers appertaining to the posts held by them. If invidious distinctions and disqualifications are allowed, not only great public inconvenience and injustice will accrue, but much needless expense will be thrown on the public Exchequer.

5. The British Indian Government cannot recognise Europeans as a dominant caste in this country, and invest them with exclusive rights and privileges. Such a proceeding will stamp the Natives as an inferior race, and engender in the mind of the nation at large a sense of injustice and wrong, and will create a permanent feeling of discontent most prejudicial to the interests both of India and England. The triumph or defeat of this Bill will be associated in the minds of the people with the triumph or defeat of a great cause—the cause of justice and equality, the cause of India being governed in its own interests and not in the interests of a small dominant class; its “symbolical significance” is great, and its fate is watched with keen interest.

6. The power to try European British subjects, which the present Bill proposes to invest Native magistrates with, has been freely enjoyed by Her Majesty's Native subjects in Ceylon, and the Sabha has the authority of Her Majesty's Colonial Under Secretary declaring in Parliament that none of the numerous and fancied dangers which such an investment is alleged to be fraught with has ever occurred there, and that no complaints are made

by the Europeans there against Native magistrates exercising criminal jurisdiction over them.

7. The same is found to be the case in the matter of Native magistrates and judges exercising criminal jurisdiction over Europeans in presidency-towns, and civil jurisdiction all over the country. The Natives have shown themselves perfectly competent and fit to hold such powers, and it is not likely they will ever prove unworthy of trust if invested with criminal jurisdiction as well over Europeans.

8. Notwithstanding this, many objections are raised against the passing of this Bill, some of which are noticed below :—

- (1) The necessity for the proposed change has not been made out.
- (2) The time for the change has not yet come.
- (3) A Native is not fit to try European British subjects because of his caste-prejudices and his ignorance of European manners, habits, and language.
- (4) There has been no popular demand for the change.

9. As regards the first objection. Since the Native civilians are rising to the rank of district magistrates and sessions judges, it is necessary for obvious reasons that they must be put on a footing of equality with European members of the same service, as regards the criminal jurisdiction over European British subjects, by removing the existing anomalous distinction and disqualification. According to the provisions of existing law, a European British subject, committing an offence not adequately punishable by a magistrate, in a district presided over by a sessions judge, who himself is not a European British subject, has to be sent up to the presidency-town for his trial before the High Court. This is a great public inconvenience, entailing, the Sabha submits, a great hardship on the aggrieved parties and on the witnesses concerned, and a good deal of needless expense on the public treasury, which it is quite desirable should be avoided by removing the judicial incapacity of the Native civilians by introducing the proposed change into the law.

10. As regards the second objection. British statesmen of great Indian experience have often declared that Native judicial officers are efficient and impartial in administering justice, and, as a matter of fact, their decisions on important questions are generally upheld by the superior tribunals. This circumstance alone encourages the Sabha to say that this objection is groundless. Any such objection would hold good if European settlers in this country were to a great extent under English law. But all Her Majesty's Indian subjects, whether European or Native, are now tried by one and the same criminal law without any distinction, and this law is entirely based upon the principles and precedents of English law and jurisprudence. The case of English residents in foreign countries being tried by their own courts is not in point, because in this country they are not tried by foreign courts, administering foreign and strange law, but by judges appointed by their own Government and by laws made by themselves.

11. With regard to the third ground of objection, the Sabha is really at a loss to conceive what bearing caste has on one's notion of justice. Had there been any force in this objection, European British subjects would never have submitted to the jurisdiction of Native magistrates in presidency towns. Native magistrates, moreover, daily try men of all castes and creeds, Hindus, Mussalmans, Pársís, Christians, Jains, Budhists, &c., and no complaint has been heard that, in trying men and women of so many races, they are swayed by caste-prejudices. As regards ignorance of European habits and language, if Natives are ignorant of European habits and language, much more are the Europeans ignorant of Native habits and languages, and would be unfit to try Natives. The fact, however, is that educated Natives possess a better knowledge of English than many English civilians possess of the Vernacular languages.

12. Lastly, it has been put forth that the Natives have never asked for the change. It is well known that, when the Criminal Procedure Code was under discussion in the Supreme Legislative Council, two eminent Native members of the Council proposed an amendment for the removal of this very anomaly. The movers clearly made out the importance of the amendment: what they said was that there should be perfect equality in respect of all

ances without any distinction of colour or creed. The Sabha does not wish to enter into the details of this question, but it is humbly of opinion that the change is really and earnestly asked for by the leading members of the Native community.

13. We cannot conclude without expressing the Sabha's great regret at the hostile attitude of a certain section of the European community in India on this subject. A broad question has been raised—"What ideal shall we set before our eyes" in the government of the various nations of this great Empire? The Sabha has not the slightest doubt that His Excellency the present Viceroy's Government will settle this question rightly and wisely, and in the interests of the millions of Her Majesty's Indian subjects entrusted to His Excellency's care.

GANESH PANDURANG AGTERY, *Vice-President.*

RAGHUNATH PANDURANG KARANDIKAR, } *Honorary*
NARAYAN PANDURANG AGTERY, } *Secretaries.*

No. 75.

MEMORIAL of certain EUROPEAN BRITISH SUBJECTS resident in India (dated 30th August 1883) to His Excellency the Most Honourable the MARQUIS OF RIPON, the Governor-General of India in Council.

The memorial of the undersigned British subjects and others resident in India—

SHEWETH,—That your memorialists have good reason for believing that the whole of the official reports and opinions with reference to the Criminal Procedure Code Amendment Bill from every province of India have been duly submitted to your Excellency's Government.

2. That your memorialists understand that they are justified in stating that these reports and opinions constitute an overwhelming preponderance adverse to the Bill.

3. That on the occasion when this Bill was introduced into the Legislative Council, on the 9th* of February last, the principal argument for its introduction lay in the belief of the Government that they were supported by an overwhelming consensus of official opinion in favour of the measure.

* On the motion for leave to introduce the Bill on the 2nd February 1883.

(Sd.) D. F. P.

4. That, moreover, your Excellency's Government had been induced to believe that the Government of Bengal, the province that would be primarily affected by the Bill, was desirous that the Bill should be passed.

5. That your Excellency's Government has now been made aware that its previous action in the matter was based upon misconception.

6. That the Lieutenant-Governor of Bengal, together with a large majority of his district and other officers, have declared themselves strongly opposed to the Bill, whilst Sir Ashley Eden, the Lieutenant-Governor who was held responsible for setting in motion your Excellency's Government, has taken an early opportunity of explaining away the construction which had been placed upon his letter, and of repudiating all responsibility for the present Bill.

7. That your memorialists would respectfully urge upon your Excellency that, if they are justified in their belief that the preponderance of official opinion is adverse to the Bill, in that case the same argument which induced the introduction of the measure should now compel its withdrawal. A concession to the force of collective official opinion formed the main argument for its introduction. A like compliance with the ascertained results of that opinion would seem to your memorialists logically to demand its withdrawal.

8. That this view of your memorialists is, moreover, considerably strengthened by the frank and unreserved undertaking given by your Excellency at the debate in the Council on the 12th† February last to allow the fullest weight and the most deliberate

† 9th March 1883.

(Sd.) D. F. P.

consideration to the opinions, official and non-official, that might be submitted to the Government.

9. That this undertaking of your Excellency has been naturally construed in the light of a public pledge on the part of the Government to abide by the results of these opinions,

10. That since the debate in the Council on February last, two principal arguments have been urged as calculated to influence your Excellency's Government in favour of violating this pledge, namely:—

(a.) That the Government will lose prestige by withdrawing the Bill.

(b.) That the Queen's Proclamation of 1858 imperatively requires the Government to pass the Bill.

11. Your memorialists submit that, if there were any rational force in the first contention, the Government would never be in a position to withdraw any measure, however mischievous its consequences, when it had been once introduced and had encountered opposition.

12. That your Excellency has emphatically stated that it is impossible to submit Government measures for public criticism prior to their being introduced into the Council. But these measures are published with the avowed object of inviting public criticism and securing a full expression of public opinion. If, therefore, this contention were accepted as valid by the Government, the whole of the existing policy in this direction would be liable to the serious charge that it is nothing better than transparent political hypocrisy. No Government, your memorialists feel assured, would consent to admit that State measures which are avowedly published in order to obtain an unreserved expression of public opinion are overweighed with the foregone intention on the part of Government of entirely ignoring all adverse opinions. If any Government were to condescend to accept so immoral and illogical a position, it could hardly fail to ruin in public estimation every State measure of public importance emanating from the Government.

13. That your memorialists, therefore, desire to express their implicit and unhesitating belief that this argument is entirely devoid of the faintest shadow of support on the part of your Excellency's Government.

14. That your memorialists think it their duty to protest against the contention that the Government prestige will suffer more from the withdrawal of a mischievous and obnoxious measure, which was introduced under an entire misconception as to official and non-official opinion, than by its exposing itself to a charge of political breach of faith by passing this measure into law despite of the weighty pledge uttered by your Excellency in Council. In the one case, the loss of prestige, if any, would be insignificant and ephemeral, while in the other the loss in public estimation would be permanent and irreparable.

15. That the maxim "*Quem poenitet peccasse, pene est innocens*" is as applicable to politics as to ethics.

16. That your memorialists, however, are prepared to deny that the Government will lose any prestige by at once withdrawing the Bill. The present is a proper and fitting halting-place for the further consideration of the Bill, where the Government are enabled honestly and logically to abide by the result of the opinions which they have themselves invited.

17. That, in the opinion of your memorialists, the withdrawal of a measure introduced under a total misconception of facts and the actual condition of public and official opinion, so far from weakening the prestige of Government, will assist in strengthening its hold upon the rational convictions of the whole community.

18. That an honest and magnanimous confession of political error will at all times evoke a generous and loyal response, whilst a persistence in the opposite course, despite the clear and determined expression of public protest by that class which alone is to be affected by the measure, must sooner or later land every Government in a position of political embarrassment, as exhibiting a policy which is entirely oblivious of the true principles upon which the real strength of every Government is founded.

19. That your memorialists are well aware that a powerful despotic Government, like that which must from the force of circumstances continue to exist in India, is in a position to compel obedience to every act of State, however much, and however seriously, it may affront public opinion, as

inexpedient, impolitic and inequitable; but your memorialists would respectfully remind your Excellency that a compulsory and unwilling obedience of the whole of a powerful and influential community must inevitably lead to estrangement between the Government and the governed, and induce a political tension likely to operate most disastrously upon the material and moral advancement of the State.

20. That your memorialists would further point out that the British Government in India must from the abnormal nature of its position, rest finally for support and assistance in critical times upon the willing, loyal, and energetic assistance of the European community, and that therefore your memorialists can hardly think it possible that the Government, armed with the full knowledge of the paramount importance of this support, will wantonly imperil the cordial relations which have hitherto so happily and invariably existed between the Government and this class of Her Majesty's subjects in India by forcing its views on them by the exercise of naked arbitrary power, in the teeth of legitimate but strenuous opposition and public dissent.

21. That your Excellency will find a suitable precedent for the course now suggested in the coincidence of the recent withdrawal by the Home Government of the English Criminal Procedure Bill. That Bill was withdrawn by Government on the admitted grounds of the opposition which had been aroused to its provisions, and affords an accidental analogue to the Indian Criminal Procedure Bill. No one, however, knows better than your Excellency, equipped with so full and varied an experience of English political life, that it is an event of everyday occurrence for an English ministry to make ample and generous concessions to adverse criticisms and matured and conscientious opposition.

22. That it has been further urged, both here and in England, as an argument in favour of the Government proceeding with this Bill, that this course of action is rendered imperative by the terms of Her Gracious Majesty's Proclamation of 1858.

23. That a consideration of the Proclamation will show that it simply declares that, "so far as may be," all Her Majesty's subjects, "of whatever race or creed," shall be freely and impartially admitted "to offices the duties of which they may be qualified by their education, ability, and integrity duly to discharge." In other words, the subject of the promise contained in the Proclamation is the admission of natives to offices of a certain character, and it is left to the unfettered discretion of the Government to determine the limits within which its application may be consistent with political expediency.

24. That the question at issue between the advocates and the opponents of the Bill is not one of the admission of natives to offices, and therefore not one affected by the Proclamation, but of their exercise in certain offices of a power which is in no way essential to their tenure thereof, and their exercise of which is inconsistent with the existing rights, and would be injurious to the interests, of your memorialists.

25. That, moreover, if the interpretation now sought to be imposed has any rational or logical weight, then the admission of natives of India to the Civil Service under the statutory rules to the total exclusion of other classes of Her Majesty's subjects of a different "race and creed," despite the emphatic prohibition affirmed in the Proclamation, would operate as a gross violation of its provisions. It would, therefore, be the imperative duty of Government, in obedience to this recently-discovered canon of construction, to adopt immediate measures to compel the repeal of a measure which violates in so flagrant a manner the just prohibitions of race-disability.

26. That the argument of the impossibility of exclusion in one direction, when confined merely to a question of limited jurisdiction, necessarily carries with it as an *à fortiori* argument the political and logical impossibility of further maintaining the race-exclusion under a similar interpretation when applied to the whole class of Her Majesty's European and Anglo-Indian subjects resident in India.

27. That, your memorialists, therefore, respectfully submit that both the arguments recently adduced in favour of proceeding further with the Bill, based respectively upon the forced interpretation of the Queen's Proclama-

tion and upon the supposed loss of prestige to the Government by withdrawing it, are entirely unworthy of the serious consideration of your Excellency's Government.

28. That your memorialists accordingly earnestly entreat your Excellency to give due weight and consideration to the opinions, official and non-official; and if, as your memorialists are led to believe, those opinions which are adverse to the Bill preponderate, then in that case to restore political rest to the country by withdrawing the Bill.

29. That, as your Excellency is well aware, the whole of India has been a prey to agitation, unrest, and fierce emotion ever since the day when this unfortunate measure was introduced.

30. That your Excellency occupies at the present moment an honourable political vantage ground, from which your Excellency is enabled, as by the wave of a magician's wand, at once to restore the tranquillity and prosperity which prevailed in so marked a measure immediately prior to the introduction of this ill-omened measure. That your Excellency is in a position to bring us back political peace with honour. Your memorialists, therefore, most earnestly beg of your Excellency to seize this opportunity, and to conclude by wise and magnanimous statesmanship this fruitful source of heart-burning and agitation.

31. If, however, your Excellency is unhappily not prepared to adopt this most desirable course, an alternative which your memorialists would contemplate with feelings of grave and unmixed regret, then, in that case your memorialists would respectfully urge that the whole of the reports and opinions, official and non-official, which have been sent in to the Government, should be at once published *in extenso*, and that your Excellency should be pleased to abstain from proceeding further with the Bill until such time as the opinions and reports have been laid before both Houses of Parliament, so that each member of each House shall have had the fullest opportunity of deliberately considering and weighing their purport.

32. That your memorialists are emboldened to urge this request by the remembrance of the declaration made by your Excellency on the occasion of the debate in the Council on the 9th of March last, that "to the decision of the House of Commons both parties must bow," and your Excellency further stated that you were the last man to object to an appeal to the House of Commons to decide the question.

33. That your Excellency will well understand that it would have been most undesirable that a definite and conclusive expression of opinion should have been obtained from the Houses of Parliament until such time as the members of both Houses should have been placed in as good a position as your Excellency for forming a correct opinion of the merits of the question, by being enabled to consider and weigh all the opinions and reports submitted to your Excellency on the subject.

34. That it would be contrary to the letter as well as to the spirit of your Excellency's declaration in Council to proceed further with the Bill until Parliament shall have been allowed the fullest and most deliberate opportunity of arriving at a just conclusion.

35. That your memorialists, therefore, feel perfectly confident, in the event of your Excellency in Council refusing to consent to withdraw the Bill at once, that at all events your Excellency will lend a favourable ear to the alternative request of your memorialists and abstain from further proceeding with the Bill until Parliament shall have been fully informed as to the merits of the question, by having the whole of the opinions and reports published *in extenso* and laid before both Houses.

36. Wherefore your memorialists respectfully pray your Excellency in Council, in the interests of the whole community in India, native and Anglo-Indian, that the Bill for the amendment of the Criminal Procedure Code may be at once withdrawn. But in the event of your Excellency's Government declining to consent to adopt this course, that, as an act of public justice and political good faith, the whole of the reports and opinions, official and non-official, which have been submitted to your Excellency's Government on the subject, may be published *in extenso* and without delay, and that your Excellency will be graciously pleased to abstain from proceed-

ing further with the consideration of the Bill until such time as the members of both Houses of Parliament shall have had the fullest opportunity of deliberately weighing and carefully considering these reports and opinions.

And your memorialists, as in duty bound, will ever pray.

(Signed) J. J. J. KESWICK,

*Chairman of the Public Meeting
held in the Town Hall on Thursday,
the 23rd August current, on behalf of
the 2,500 to 3,000 European British
subjects who attended that meeting
and are opposed to the Criminal
Procedure Code Amendment Bill.*

No. 76.

From JOINT HONORARY SECRETARY, Howrah People's Association, to SECRETARY TO GOVERNMENT OF INDIA, Legislative Department (No. 1,998, dated 26th August 1883).

BEING directed by the Committee of the Howrah People's Association, I have the honour to lay before the Legislative Council of India the following on the Bill for the amendment of the Code of Criminal Procedure of India. I am also directed by the Committee to submit that nothing but a strong conviction of the justice of the principle involved in the Bill, and of the utter weakness of the opposition offered to it in certain quarters, has moved the Committee to approach the Supreme Legislature of the realm with this expression of opinion.

2. Before the Legislation of 1872, which first vested the Criminal Courts of the Mufassal presided over by British-born magistrates with jurisdiction over European British subjects, the Supreme Courts established under Act of Parliament, and after them the High Courts, which inherited the jurisdiction of the former, could alone try British-born subjects residing in India. The Indian Law Commission, consisting, as it did, of some of the best lawyers and ablest jurists of England,—men who were least open to the charge of speculative tendencies in legislation,—had eloquently exposed the inconveniences of the system. The literature of the Indian Law Commission upon this subject is almost complete and exhaustive. All the objections that Sir James Romilly and others had urged against the exclusive jurisdiction of the Supreme Courts would, the Committee think, as to principle, apply equally to the present exclusive jurisdiction of British-born magistrates over offenders of their own status. In practice, also, the Committee submit, all the inconveniences arising from the exclusive jurisdiction of the Supreme Courts, against which these jurists had eloquently inveighed, continue, though only in a modified form, under the present exclusive jurisdiction of British magistrates in the interior. There are, at this moment, speaking of the territories subject to the authority of the Lieutenant-Governor of Bengal alone, little less than a hundred sub-divisions in which there are no criminal courts presided over by British-born magistrates. In the case, therefore, of European British subjects offending within the limits of these areas, the distance of the *locus delicti* from the constituted *forum* very often leads, the Committee are persuaded, to a laxity in the administration of justice, and not unoften to downright failure of justice. The Committee are of opinion that the smaller offences, in which the Sovereign does not often interfere, are never brought before the Courts, the parties wronged often electing to silently put up with those wrongs instead of incurring an expenditure of time and money that is almost ruinous to them. Add to this when the victims of these offences weigh such expenditure of time and money and the infinite annoyance and vexation, which a criminal prosecution in a distant *forum* necessarily involves, against the certainty of provoking the hostility of powerful enemies in their midst, their resolution is soon taken. The result is that European British subjects residing in the interior enjoy a practical impunity as regards these offences. In the cases of the more serious

crimes, again, in the prosecution of which the Sovereign always actively interferes, the state of things is hardly different. Cases of this description are, the Committee believe, seldom brought before the courts at the instance of the parties themselves that are wronged. Prosecutors in such instances are, in practice as in theory, only witnesses for the Crown—unwilling witnesses, as the courts of justice themselves can testify. This unwillingness, the Committee submit, mainly arises from the circumstance that the vexation and annoyance consequent upon attendance in distant courts weighs with them heavier than the remote chance there is of a conviction of the accused. Even the police, almost omnipotent as it is in the Indian Mufassal in collecting evidence of a perpetrated crime, loses its courage in a case in which the accused is a British-born subject. It has been remarked by an able English lawyer that, so far as its consequences on society are concerned, the purity of the judicial tribunals of a country is of secondary importance to the reputation of their purity. In no country, the Committee believe, is it more so than in India, consisting of a vast mixed population, almost entirely shut out of the exercise of any important political or administrative power except in the lowest situations. The existence in the midst of such a population of an especial class of magistracy to try an especial class of offenders—offenders, besides, who are of the same creed and colour with that magistracy itself—is well calculated to give rise to an impression that, so far as these offenders are concerned, the purity of justice is only a name. Rightly or wrongly, that impression, the Committee are persuaded, unfortunately exists. What the political effects of such an impression permeating the masses throughout the country through a long series of years might be, cannot be unworthy the earnest attention of the responsible legislature of the realm.

3. Adverting to the argument that the Bill, if passed, would endanger commerce and serve to withdraw British capital that is now so necessary to the development of the resources of India, it is impossible to suppose that those who advance this plea do so in all seriousness. It can only provoke a smile in sober men familiar with human nature and capable of judging human actions, or having the least acquaintance with the history of India. The cry itself is old, very old, indeed, in the history of Indian reform. The agitators against the first Black Act had urged such a plea. But their gloomy predictions were falsified by the course of events. So far from commerce suffering or British capital being withdrawn, the increase of commerce and the influx of capital were both so marked that the prophets of 1836 got little credit for foresight. The same cry was raised in 1848, with the same result demonstrated by subsequent events. That the prophecies of 1883 will escape the fate of their predecessors there does not seem to be any adequate guarantee.

4. There is another point of view connected with the question of the Jurisdiction Bill before the Council which is of the gravest importance. After the revolt of 1857, Her Majesty the Queen-Empress of India had graciously given to Her Majesty's subjects of this realm the assurance of legal and political equality with British-born subjects. Her language is unmistakable. That gracious Proclamation was published at the time most extensively in original and translation. The people of this country regard it with the greatest veneration. They look upon it as the great charter of their rights. Although a little more than a quarter of a century has passed away since that Proclamation, yet nothing of much importance, the Committee think, has been done to equalise the position of the two classes of Her Majesty's subjects in India. The Jurisdiction Bill, indeed, is viewed as the first instalment of the promised equality. If it is withdrawn, the Native mind, the Committee fear, will be apt to take the impression that Her Majesty's responsible servants in India are practically in the way of the execution of the Royal liberality. The Committee are not sure that the natives will be content with saying this only.

5. The plea, that in a question of this nature the feelings of those to be subjected to the jurisdiction should be considered, and *not* the convenience of others, seems to the Committee a specious sophism. Although it has the sanction of authority, yet it is not, the Committee think, difficult to dispose of it. The legislature is, no doubt, bound to take into consideration the

feelings, even the prejudices, of those over whom it is to legislate. That is, indeed, an axiom. But the axiom is not, the Committee are persuaded, more important than its limitation, namely, that the legislature should *not* act upon such feelings or prejudices when they are likely to produce public harm. Viewed by itself, the Committee are willing to admit, it may seem an innocent matter to indulge the British-born subjects in India with an exclusive set of tribunals for them; but, as the Committee have endeavoured to show, such indulgence is not compatible with the effective administration of justice.

6. Omitting advertence to all narrower issues, as understood by the people of India, the broad issue involved in the Jurisdiction Bill is in whom the government of 200 millions of Indian subjects is really vested? Is it vested, they have already begun to ask themselves, in the Crown and its responsible servants, or in the handful of Europeans making India their temporary home and who quit the country as soon as they have secured a competence or as soon as they find that they have nothing more to do in this land? This handful of persons have done their best to bring the responsible Government of the country into discredit by bold attempts at misrepresentation, by vituperation in the worst possible taste, by inciting their weaker sex to take part in the turmoil, by even talking treason. If in consequence of agitation such as this the Bill were withdrawn, the lesson, the Committee are persuaded, that the natives would learn would be that the government of the country has been virtually transferred to this class of subjects. The latter, also, finding success attainable by such means, would not fail, the Committee fear, to employ them on every occasion when their feelings, their prejudices, as in the present case, might be interfered with.

7. The plea that, if native aspirations were satisfied in the present instance at the expense of Anglo-Indian sentiment, native ambition would be more and more insatiable, is, the Committee believe, hardly just. The history of all monarchies, of all republics, of all states under whatever form of government, presents but one fact, and that is the gradual political equalisation of the different orders of people comprising them. At first there is inequality, then comes the period of aspiration and transition, then equalisation. This is the grand law of states and political communities. It argues nothing but illiberality to fret at this; one can no more prevent such final equalisation than stop the waters of a mighty river swollen with tropical rains from finding their way to the ocean.

8. As to the argument that has been made much of by the opponents of the Bill, namely, that any effort that is made at equalising the status of the native with that of the British-born subject of India directly leads to a corresponding decrease of that prestige by which alone the dark millions of India have been kept under the sway of a handful of white men, it may, the Committee submit, be disposed of as easily. It is fifty years since Parliament first thought of granting equal rights and privileges to the natives of India. Since then Parliament has thought proper to reiterate those assurances often and often. The policy of repression must, therefore, be taken to have been deliberately abandoned. Indeed that ignoble policy received its death-doom when in 1859, on the conclusion of a serious revolt that was with difficulty quelled by British moderation as well as by British valour, the Sovereign in her own person directly gave to her Indian subjects the assurance of political equality. That assurance was given when the public mind of England was fully alive to the consideration of how best to retain India. The question of prestige, therefore, that is now raised must unquestionably have been fully settled by the Sovereign and her responsible advisers, with the full consent of the Houses of Parliament, before the Sovereign was made to speak so plainly and at such a time to her people.

9. These are the humble views of the Committee, and, as they are persuaded, of the immense majority of their countrymen. They are submitted to the consideration of the Honourable Council with all possible deference in the hope that they may have some little, a feathers' weight in inducing the Legislature to pass the Bill without delay. The Committee have only to ask pardon for any unwitting impropriety. For, in submitting these few remarks upon the Bill before the Council, the Committee of the Howrah People's

Association can humbly state that they are actuated by nothing but loyalty to their Sovereign, duty to themselves and their best interests, at the same time that they have the best wishes also for the British-born subjects of the Crown in India.

(Signed) AMBICA CHARAN GHOSAL.

No. 77.

From SECRETARY to GOVERNMENT, Panjáb, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department (No. 950, dated 10th September, 1883).

IN continuation of my letter, No. 749 of the 9th July, 1883, I am directed to submit, for the information of the Government of India, a copy of a Resolution, No. 6, from the proceedings of a meeting of the Anjuman-i-Panjáb held on the 2nd July 1883, on the Bill to amend the Criminal Procedure Code.

(Signed) W. M. YOUNG.

EXTRACT COPY of a RESOLUTION, No. 6, from the PROCEEDINGS of a MEETING of the ANJUMAN-I-PANJÁB held on the 2nd July 1883.

That, in the opinion of this meeting, Mr. Ilbert's proposed amendments of the Criminal Procedure Code are based upon justice and sound policy, and are in accordance with those intentions of the Empress of India which are contained in the Proclamation of 1858.

The Resolution was put to the vote and adopted by the majority.

No. 78.

MEMORIAL of the SHEREPUR NEETI SABHÁ to His Excellency the Most Honourable GEORGE FREDERICK SAMUEL ROBINSON, MARQUIS OF RIPON, K.G., P.C., G.M.S.I., G.M.I.E., Viceroy and Governor-General of India.

YOUR EXCELLENCY,—We, the undersigned members of the Sherepur Neeti Sabhá, beg most humbly to approach your Excellency and offer you our heartfelt gratitude for the benefits which your Excellency has conferred on the dumb millions of India.

The repeal of the Vernacular Press Act, the extensive publication of legislative measures, the supply of Government stores from Indian bázárs the extension of light railway lines all over India, the impetus given to native trade, the local self-government Resolution, the Education Commission, and last, though not the least, the Native Magistrates' Jurisdiction Bill, popularly called the Ilbert Bill—are measures which have created a new era in the administration of British India, and have enshrined your Excellency's name in the hearts of the Indian people. But it is with reference to the last measure only that your Excellency's humble memorialists ask the indulgence to say a few words.

It has been given out by the opponents of the Ilbert Bill that the natives themselves do not want the privileges which the Bill proposes to confer on them. Your Excellency's memorialists most humbly beg to state that this statement is the very reverse of true. We think all native newspapers, without a single exception, support the Bill: the feeling of the whole native community is strongly in favour of the salutary changes proposed by it. But the reason why the natives have not set up an organized agitation in support of the Bill, as the Europeans and Eurasians have done against it, is, that they are conscious that the Government are strong enough to carry out the righteous cause they have espoused.

However insignificant the measure might have been in the beginning, the heated agitation set up against it has given it a paramount political importance which the Government cannot ignore. The natives look to the Bill as a measure that would test the justice of the English nation, that would prove to the world whether race-distinction, that was dying out under the benign and liberal administration of the British Indian Government, should again be publicly and solemnly upheld. The solemn Proclamation made by Her most Gracious Majesty in 1858 to the people of India is justly considered by them their Magna Charta, and the Bill which your Excellency's Government have introduced in the Legislative Council of India is simply a step towards the fulfilment of one of the most noble principles laid down in it.

So your Excellency's memorialists most humbly pray your Excellency would generously pass the Bill, for which happy consummation not only your Excellency's humble memorialists, but the whole native community, are eagerly awaiting.

And your Excellency's humble memorialists, as in duty bound, shall ever pray.

(Signed) HARA CHUNDER CHOWDHRI,
and 49 others.

No. 79.

From OFFICIATING JUNIOR SECRETARY to CHIEF COMMISSIONER, British Burma, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department.

No. 367-12L., dated 18th September 1883.

In continuation of this office letter No. 286-12L., dated the 16th July last, I am directed to submit in original a memorial addressed by the Chamber of Commerce, Rangoon, to His Excellency the Viceroy and Governor-General of India, praying that the Bill to amend the Code of Criminal Procedure may not be proceeded with.

(Signed) H. THIRKELL WHITE.

MEMORIAL of RANGOON CHAMBER OF COMMERCE, dated 31st August 1883, to His Excellency the Most Honourable the MARQUIS OF RIPON, P.C., K.G., G.C.B., G.M.S.I., Viceroy and Governor-General of India.

The Memorial of the Rangoon Chamber of Commerce—

RESPECTFULLY SHEWETH,—

That at a general Meeting of the Chamber of Commerce held on the 8th June 1883, to discuss the Criminal Procedure Code, 1882, Amendment Bill, now before the Legislative Council of His Excellency the Governor-General, the following Resolution was passed unanimously :—

1. That, in the opinion of this meeting, the Bill for the amendment of the Criminal Procedure Code is, under existing circumstances, uncalled for, and ought not to have been introduced without first eliciting the opinions of the non-official classes whom the proposed change in the administration of the law will affect.

That the privilege which Englishmen have hitherto enjoyed, of being tried by their own countrymen, is one on which they set the highest value. It has never interfered in any way with the right of the natives, nor has it occasioned inconvenience to any appreciable extent in the administration of justice.

That the European communities acquiesced in the proposal to confer on native magistrates jurisdiction over Europeans in the Presidency-towns, in the well-grounded belief that in those towns there were sufficient safeguards for the efficient performance of the duties of their office. The example of other judges, the vigilant criticism of an able and influential Bar, from whom the magistrates at the same time receive valuable assistance in arriving at

their decisions, and the influence of an intelligent public opinion, were generally felt to be sufficient guarantees against miscarriage of justice. But the case is widely different in the districts of the Mufassal, where a few isolated Europeans may have to contend with the prejudices of the surrounding people, who are necessarily ignorant of their customs and feelings. Even in England, in places where feeling runs high against the accused, it is not uncommon to change the venue in order to secure for him a fair and impartial trial. It is not unnatural for the native judge in the Mufassal, however able he may be, and anxious to dispense justice impartially, to be to some extent influenced, it may be unwittingly, by the prejudices of his own people. He enjoys none of the advantages which the native magistrates in the Presidency-towns possess, while the European who may be brought before him can neither have the assistance of his countrymen to defend him, nor the protecting influence of a strong and enlightened public opinion. Examples, indeed, are not wanting of the difference between the administration of justice in a place in the interior where an European British subject cannot have counsel to represent him, and where there is no public opinion, and the dispensing of justice in towns where there is a strong Press and he can employ counsel to defend him.

That the Code of Criminal Procedure was exhaustively discussed in 1872, and, after having been in force for 10 years, was last year re-enacted, and came into force on 1st January 1883. A variety of alterations and amendments were introduced into the new Code, after it had been submitted to the different Local Governments for their opinions, but no alteration was made in that part of it which related to European British subjects. This, your Memorialists respectfully submit, in itself showed that no practical reason, no real urgency, existed to justify the withdrawal of what is perhaps the only legal privilege which European subjects in India possess against many, on the same principle, which natives of rank and influence enjoy.

That in a country such as India, whose population is composed of so many different races, languages and religions, it is in the highest degree impolitic to introduce fundamental changes in the law, affecting large and important sections, unless such changes are justified by urgent necessity; and your Memorialists are of opinion that any such change now is premature and uncalled for.

That it has always been regarded as of great importance to the Government that harmony should exist between the Government and the general European population, and it is much to be regretted that Government did not take the precaution to elicit an expression of their opinion before the proposed Bill was introduced into the Legislative Council of His Excellency the Governor General.

Your Memorialists therefore respectfully pray that your Excellency may be pleased to abandon the proposed alteration in the law.

And your Memorialists, as in duty bound, will ever pray.

At the request, and on behalf of the Memorialists,

(Signed) J. STUART,
Secretary, Rangoon Chamber of Commerce.

No. 80.

From OFFICIATING JUNIOR SECRETARY to CHIEF COMMISSIONER, British Burma, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department.

(No. 80-12 L., dated 4th October 1883.)

IN continuation of this Office letter No. 367-12 L., dated the 18th ultimo, I am directed to submit in original a memorial addressed by the British Burma Branch of the Eurasian and Anglo-Indian Association to His Excellency the Viceroy and Governor-General of India, praying that the Bill to amend the Code of Criminal Procedure may not be proceeded with.

(Signed) H. THIRKELL WHITE.

MEMORIAL of BRITISH BURMA BRANCH of EURASIAN and ANGLO-INDIAN ASSOCIATION to His Excellency the Most Noble the MARQUIS OF RIPON, K.G., P.C., G.M.S.I., Viceroy and Governor-General of India.

May it please Your Excellency,—In accordance with the resolution passed at a general Meeting of the members of the Eurasian and Anglo-Indian Association of British Burma, we, the undersigned, beg leave respectfully to lay before your Excellency in Council our humble memorial in regard to the proposed alteration of the present law of Criminal Procedure, now generally known as the Ilbert Bill.

We regret that the present question was ever raised, for, being desirous of living at peace with all men, we feel that the controversy is highly calculated to disturb the friendly relations at present existing between the European and Indian subjects of our Gracious Sovereign the Queen. We feel that the proposal is unfair to our Indian fellow-subjects, even as it is unjust to ourselves. It thrusts on the natives responsibilities which they are unsuited to discharge, while it subjects us to an ordeal revolting to our feelings and national traditions.

Since this is the case, it is unreasonable to suppose that any other than a feeling of insecurity and mistrust can prevail when Europeans and their descendants are liable to be tried in criminal cases by an alien race.

Reared as the native is under conditions of life entirely different from our own, and inheriting those peculiarities of mind which characterise the Oriental, he is both mentally and morally unfit to be the arbiter in matters which concern the fate of a European. Sincerely believing that the native is unsuited for the position proposed to be conferred upon him, we are filled with the profoundest apprehension of the consequences which must continue to produce a widespread and painful sense of insecurity. This sense of insecurity will disastrously affect the prosperity of India, as it cannot fail to deter the investment of British capital in the country, and would in all probability cause the withdrawal of European energy and enterprise, which are at present opening up the country and developing its resources.

Your memorialists would also submit that since the national customs and prejudices of the natives are still respected,—for example, the excusing of Muhammadan females and *pardánashins* from appearing in Court,—the precious privilege of being tried by our peers be continued to us in its integrity.

The proposal at present before the Council will affect the European population, and we would beg leave respectfully to ask why should we not continue to have recourse to the best judicial administrative agency admittedly possessed by the Government in their staff of European officers.

Finally, your memorialists submit that, so far as they can see, Imperial requirements do not call for any alteration in the present law of Criminal Procedure such as that contemplated in the Bill before Your Excellency in Council.

And your memorialists therefore pray that the Bill may not be further proceeded with.

And shall ever pray, &c.

(Signed) J. MOULD, Vice-President.

Further Paper received too late to be entered in its proper place.

No. 81.

LETTER from M. VEERASWAMY NAUDOO to the VICEROY AND GOVERNOR-GENERAL OF INDIA, dated Koilpati, 30th August 1883.

To Lord Ripon, Viceroy and Governor-General of India.

MOST WORTHY LORD,—Having learned through the medium of the *Madras Mail* about your Lordship's generosity and liberal and impartial views in

making all Her Gracious Majesty's loyal subjects equal in the eye of law without any distinction whatever either to colour, race, or anything else which affects the public justice and social condition, I respectfully beg to express my humble and heartfelt gratitude.

I further beg leave to allow me to put forth my arguments against the opposition to the contemplated Amendment Bill of the Criminal Procedure Code.

Your Excellency is well aware that no distinction or restriction whatever is shown in the civil law as far as the trial of British subjects by natives is concerned. A native munsif can try any European gentleman, and a native sub-judge may go on with the case brought before him against a district judge who is his immediate superior and a British subject.

If a native munsif of not much acquirements but of a moderate knowledge can try any European gentleman, why a native covenanted magistrate of high attainment, high birth, and free from all kind of stain should not be allowed to exercise his jurisdiction over the British subjects is left to be considered by those who offer unjustifiable opposition to the impartial measure proposed by the Bill. The qualities which I mentioned above are supposed to have been necessary by the virtue of his office as a district collector or sessions judge. The absence of these qualities will render him unfit for such a high office.

Again, what more competency is required to a magisterial inquiry than what is necessary to a complicated civil case is also left for their kind consideration.

It is an admitted fact that the natives are much prejudiced and keep caste or race-distinction, and the beneficial European nations try their utmost to remove it by setting noble examples in divers ways; but it is to be regretted that they act, in the present case, in a manner unbecoming of their name and fame to teach their native brethren to revive their half-forgotten distinction and to create a rival spirit and antagonism.

Their enthusiastic zeal to protest against the reasonable, justifiable, and lawful scheme is a clear proof of their partiality and race-distinction, which they pursue quite contrary to the principles they have hitherto followed and fame hitherto earned.

If a respectable native, better than an European magistrate before whom he is tried, would patiently submit to be tried by him, why an European gentleman should be excluded from appearing before a native magistrate is left for your Lordship's benign consideration.

The superiority and inferiority do not really exist either in race, colour, or anything else, but in qualification, position, moral and mental attainments. A native who possesses all these qualities may be considered as superior to an European who is wanting in these excellent and rare qualities.

One of the reasons which the European community objecting to the Bill adduces is that the natives are incompetent to have such a power.

Anyone will easily understand that this opinion arises only from partiality and national zeal. There are many natives who can cope with the best European lawyers and can hold hand with the ablest European officials. The services of Sir T. Matheva Row, Honourable Justice Muthusami Iyer, Honourable V. Ramiengar, late Sir Salar Jung, and many Bengali Baboos are well appreciated by the Government of India and by the Home Government.

Another reason which they assign is that the natives being conquered they cannot be raised to an equal level with the conquerors.

Your Lordship will be much pleased to see that this is not at all a sound and good reason. If the English will conquer to-day Russia, Germany, or Prussia, will the conquered subjects be satisfied if they are not treated equally?

It is a great pity that such a high officer as the Honourable Lieutenant-Governor of Bengal expresses his opinion that the excitement of Europeans is not temporary.

As an enlightened nation who attained pre-eminence, moral, mental and spiritual attainments long before the other nations had attained, if it goes astray to tarnish its reputation having recourse to base and contemptible cation of violence and threatenings instead of abiding by lawful and reasonable decision, is it not the duty of Government to keep pace with the

time by acting suitably to put a dead stop to such a feeling by the enforcement of law? Is it in any way consistent with the spirit of law to be afraid of unreasonable threatenings of a selected few without bringing them, at the risk of anything, to their sense of impartiality?

Every attempt which our beneficial rulers make to give political encouragement to the natives is met with blind and enthusiastic opposition from some frenzied Europeans whose object is manifestly to crush them under their feet. Some European gentlemen treat natives no better than brutes. It is so clear everywhere that it requires no proof, but still I beg to adduce the following example.

One conservator of forest sends takeed or order to a respectable native zamíndár, whose annual income is nearly a lakh and a half, addressing him in disrespectful terms.

Every native under Her gracious rule may freely, lawfully, and reasonably establish his general right without any distinction whatever.

All the European gentlemen as well as natives may enjoy all the advantages offered by our bountiful and impartial ruler.

The learned and enlightened European gentlemen think it to be a disrespect to appear before a native magistrate for trial, but it is in my humble opinion that they are wrong if they do. Although the magistrate is a native, the office he holds is not a native. As a faithful servant of Her Majesty he performs his duty and legal function, and so it is not at all a disrespect to go before him as long as he is Her gracious servant. If he goes out of his way in the course of trial and does anything out of spite or malice, he well deserves to be deprived of such a high position.

If there is any apprehension that the justice will be miscarried, it will be advisable to appoint European jurors selected by the criminal and by the court as an auxiliary to the presiding officer and as a check over his unworthy actions.

Such a distinction as they claim is contrary to the notion of abstract equity, and hinders social progress.

Last of all I humbly beg to state that, if the European gentlemen will claim the exclusive privilege of being tried only by their own nation, it will be considered just and right if a high caste native will refuse to submit to be tried by a low caste magistrate.

I therefore earnestly and humbly solicit your Lordship to move the Parliament to decide the question once for all, as the subject was touched upon as early as 1848, and is still pending without a final decision.

(Signed) M. VEERASWAMY NAUDOO.

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EAST INDIA (JURISDICTION OF NATIVES OVER
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FURTHER PAPERS AND CORRESPONDENCE

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1882,**

WITH RESPECT TO

JURISDICTION OVER EUROPEAN BRITISH SUBJECTS;

IN CONTINUATION OF PAPER [C. 3877].

Presented to both Houses of Parliament by Command of Her Majesty.



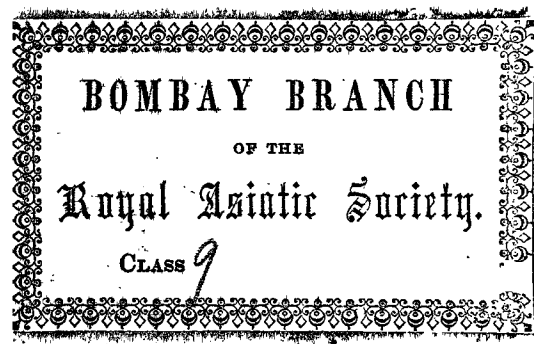
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No. 1.

LETTER from the GOVERNMENT of INDIA (Legislative Department),
No. 35 of 1883, to the SECRETARY of STATE for INDIA.

MY LORD,

Simla, the 10th August 1883.

ON the 9th September 1882, we addressed a Despatch to your Lordship's predecessor, on the subject of the provision of the Criminal Procedure Code which disqualifies Native Judicial Officers in the Mofussil from trying European British subjects for criminal offences, forwarding to him copies of correspondence regarding it which had passed between us and Local Governments, and submitting for his consideration certain proposals for the removal of this disqualification. Lord Hartington informed us on 7th December last that, having very carefully considered those proposals in Council, he was prepared to sanction the introduction of a Bill such as we suggested. The Bill was accordingly prepared and introduced into the Legislative Council on the 2nd February last, with the intention of allowing full time to the public for the consideration of the measure before it was carried through its final stages. At a very early period a strong opposition was developed, not so much to the details of the Bill as to the principle upon which it was based, and, before any discussion of it had taken place in the Legislative Council, or any representations on the subject had been made to the Government, a public meeting, of which a report is annexed, was held in the Town Hall at Calcutta. On the 9th March the Bill was discussed in the Legislative Council, but no vote on it was taken, the motion then made being only that it should be referred in the usual manner to Local Governments for their opinions. Those opinions have now been received and are forwarded herewith, and it has become our duty to give to them and to the discussions in the press and at public meetings our most careful and deliberate consideration.

2. The result of these reports and discussions may be briefly summarized as follows:—Of the greater Local Governments, one desires the complete abandonment of the measure, and four oppose its withdrawal, but recommend various amendments; while of the minor Administrations, four advocate withdrawal, and two oppose it, suggesting modifications in its details. The opinions of the Judges of the various High and Chief Courts are divided, some being in favour of the principle of the Bill, and others opposed to it. Of the local officers consulted, the great majority advocate the abandonment of the Bill, though the grounds of opposition, as is natural, vary considerably. European non-official opinion is, speaking generally, altogether against the Bill; Native non-official opinion generally supports it.

3. In deciding what course we should, under these circumstances, recommend to your Lordship, we have given the fullest consideration to the strong dislike displayed towards the Bill by the European community. Their opposition to proposals by which they are directly affected is entitled to be weighed by us with the greatest care. But at the same time we are bound to inquire upon what grounds that opposition is founded, and it is impossible for any one to have read the speeches at such meetings as that in the Calcutta Town Hall, or the long series of articles in many of the European newspapers, or the letters which have been addressed to them, and which they have published, and not to see clearly that the real question which underlies this controversy is not confined within the narrow limits of this Bill, but extends far beyond them, and brings into discussion some of the fundamental principles of British policy in India. The 15th, 16th, 17th,

* See Command Paper, No. 3877, pages 197 and 198.

18th, and 19th paragraphs of the letter* of Mr. Beames, the Commissioner of Burdwan, will illustrate what we mean, while it would be easy to refer to countless articles and letters in public journals, which would substantiate in a much more striking manner the accuracy of the opinion which we have expressed above. We have, therefore, to deal with a large question of policy, and we have no doubt that the

abandonment of the Bill under existing circumstances would, in the light of the controversy which has arisen, be regarded as a withdrawal on the part of the Government from the principles which have been gradually and steadily applied by our predecessors under the orders of Her Majesty's Government for a long series of years, going back to 1833, when the Act 3 & 4 Will. IV., cap. 85, was passed. The 87th section of that Act runs as follows:—"No Native of the said territories" (India), "nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disqualified from holding any place, office, or employment under the said Company." And the Court of Directors interpreted that section in an explanatory Despatch in these words:—"The Court conceive this section to mean that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinction of race or religion shall not be of the number; that no subject of the King, whether of India, or British, or mixed descent, shall be excluded either from the posts usually conferred on the Covenanted Servants in India, or from the Covenanted Service itself, provided he be otherwise eligible." We have, therefore, to decide whether we shall take a small step forward in the application of the principles thus set forth, or whether we shall draw back from the deliberate policy of the Crown and of Parliament when it has been unequivocally called in question. It appears to us that it would be inconsistent with our duty to deviate in any way from that policy, or to listen to any arguments inconsistent with it. Speaking in the Legislative Council on the 9th March, the Viceroy said,—“The Bill will now, in accordance with the usual practice, be sent to the various Local Governments, and they will have an opportunity of recording their views upon it. Those views will be sent up in due course, after careful examination by the Local Governments into all the circumstances of the case, for the consideration of the Government of India; and we shall then give to the observations of the Local Governments and of the public which may have reached us in the meantime the fullest weight and the most deliberate consideration. I frankly say that with those who desire, if any such there be, to retain the distinction which this Bill proposes to remove merely because it is a race distinction, I have no sympathy whatever. To arguments which are inconsistent with the declared policy of the Crown and of Parliament it would be contrary to my duty to listen; but to fair reasons, urged in a manner to which the Government can give heed, the ears of myself and my colleagues will always be open on this and on every other question.” We agree with this declaration, and to the principle of the Bill therefore, when it has been directly challenged, we hold that we ought to adhere.

4. An examination of the opinions of District Officers shows that their wish that the Bill should be withdrawn is to a great extent founded upon the strong opposition which it has encountered from the European community. We need not say how sincerely we regret that any measure which we have thought it our duty to propose should have proved distasteful to so large a number of Her Majesty's British subjects residing in India, and we quite share with the District Officers, to whose opinions we are referring, the desire to remove any just cause of complaint on the part of persons who have on so many grounds very powerful claims upon our consideration. But if it can be shown, as we believe it can, that especially with certain modifications, which we shall explain presently, this measure, of which the immediate effect will be very limited, can be brought into operation without any real danger to the interests of Europeans in this country; and if, on the other hand, it is plain, for the reasons which we have given above, that the opposition which has sprung up against it has its root in a deep-seated objection to the general policy of successive English Governments, we are of opinion that, unless your Lordship should think fit otherwise to direct, we are bound not to abandon the principles upon which this measure and the long series of measures which have preceded it are founded.

5. The main ground upon which the Government of Bengal, when Sir A. Eden was at its head, rested the recommendation of an alteration in the existing law, was that of administrative convenience. In reference to this

point it is said in many of the accompanying reports from local officers that no administrative inconvenience results at present from the existing law. We have always admitted that little practical inconvenience has as yet arisen, and that it will not reach its height for some years to come, but it is, in our judgment, impossible to contend that when at no very distant time, under the operation of the rules promulgated by Lord Lytton's Government in 1879, one sixth* of the offices reserved for the Covenanted Civil Service are filled by

* Error for one fifth.

Natives of India, serious inconvenience, accompanied, it may be feared, by occasional failure of justice, will not result from the disqualification of one in every six of the higher Judicial Officers in the country for the trial of European British subjects. It is surely, therefore, safer and wiser to change the law now, when its immediate scope will be very limited, and thus to extend very cautiously and gradually to the highest class of Native Judicial Officers in the Mofussil the limited power of trying European British subjects which the Bill would confer, than to wait until the alteration is forced upon us by pressing necessity, and must, therefore, be much more sudden and extensive. We find nothing in these papers to make us doubt that the wisest course is to confer this jurisdiction on Native Judicial Officers slowly and tentatively, as it will be conferred if the change is introduced at the present time. We have also had to ask ourselves what would be the effect of the withdrawal of the present Bill in the full and admitted expectation that it will be necessary to introduce a similar measure some five or ten years hence. We see nothing in the manner in which this Bill has been opposed to lead us to suppose that it would meet with less opposition after an interval of a few years; its leading opponents would be the first to declare that their objection was to the principle, not to the opportunity of the proposed change; and a renewal of such an agitation as that which has been going on lately would be greatly to be deprecated. We cannot, therefore, recommend, as affording a satisfactory solution of the question, the adoption of the proposal of Mr. Cordery, the Resident at Hyderabad, that "the Government should admit that it was misled into the belief that 'the time had come' for the measure, but at the same time should couple this admission of error with a strong assertion that the truth of the principle was still amply recognized, and that the time would come hereafter for its embodiment in a Legislative Act."

6. Opinions are expressed in the accompanying papers† unfavourable to the fitness of Native Judicial Officers, under any circumstances, to try European British subjects; but some of these opinions, if they are to be taken as literally correct, would go to prove the general unfitness of Natives of India to discharge judicial duties at all,—a view of the matter against which opinions of the greatest weight may be quoted. We will refer only to a few. Viscount Cranbrook, in his Despatch of the 7th November 1878, used the following words:—"The class of appointments for which Natives of India will be most eminently fit is, no doubt, the judicial." Sir R. Temple, when Lieutenant Governor of Bengal, in a Minute dated the 5th June 1876, wrote as follows:—"It is not necessary to add much to that which has so frequently been urged regarding the suitableness and the propriety of appointing Natives to the higher offices in the judicial branch. Doubtless they are well qualified for this important kind of work, and this naturally is the branch wherein their employment in the higher capacities will first be extended; in fact, such employment of them has already been tried, in some instances, with a good degree of success." In a recent debate in the House of Lords, Lord Selborne is reported to have spoken as follows:—"The question might be asked,—What has been our experience hitherto of Native Judges? My Lords, for some years I practised in Indian cases before the Judicial Committee of the Privy Council, and during those years there were few cases of any Imperial importance in which I was not concerned. I had considerable opportunities of observing the manner in which, in civil cases, the Native Judges did their duty, and I have no hesitation in saying — and I know this was also the opinion of the Judges during that time—that the judgments of the Native Judges bore most favourable comparison, as a general rule, with the judgments of the English Judges. I should be sorry

“ to say anything in disparagement of English Judges, who, as a class, are
 “ most anxious to carefully discharge their duty ; but I repeat that I have
 “ no hesitation in saying that in every instance, in respect of integrity, of
 “ learning, of knowledge, of the soundness and satisfactory character of the
 “ judgments arrived at, the Native judgments were quite as good as those of
 “ English Judges. And since 1861, my Lords, we have had experience of
 “ Indian Native Judges in the High Courts, where they have had jurisdiction
 “ over Europeans. How have they used that power ? Have they not secured
 “ the confidence of the public ? I venture to say they have.”

7. But apart from allegations involving general judicial unfitness, it is frequently urged in these papers that, owing to their deficient knowledge of English ways of thought and habits of life, Natives are necessarily unfitted to try cases where the defendant is an European. We have carefully weighed this argument, and we admit that in the case of junior officers it may often be urged with considerable effect. It affords, therefore, an additional ground for restricting the Bill, as for another reason we are about to propose, to Sessions Judges and District Magistrates, inasmuch as those officers, besides being of necessity acquainted with English, will also have had the advantage of a long training in executive and judicial (criminal) work under the close supervision of English superiors, before being entrusted with powers over European British subjects. It must also be borne in mind that ignorance of English habits and modes of thought has not been found to prevent Native Judges from giving sound and satisfactory decisions in civil cases, where one or both of the parties happened to be Europeans. We are, therefore, of opinion that this argument, though sufficiently important to demand from us a careful selection of the officers in whom the jurisdiction is to be vested, is not of such validity as to justify us in abandoning the Bill.

8. In considering this branch of the question as it affects European British subjects, it must always be borne in mind that no person who would obtain jurisdiction under the present Bill would have power to try any one belonging to that category for any offence which, if proved, would require the infliction of a more severe sentence than one year's imprisonment.

9. There is one matter connected with the present position of Native Judicial Officers of high rank to which very little attention has hitherto been given, and to which no allusion is made in any of the papers now or previously forwarded, except so far as is involved in the following observations contained in the letter of the Bengal Government of the 28th March 1882 :—More-
 “ over, if this power is not conferred upon Native members of the Civil
 “ Service, the anomaly may be presented of a European Joint Magistrate,
 “ who is subordinate to a Native District Magistrate or Sessions Judge, being
 “ empowered to try cases which his immediate superior cannot try.” There is much force in this remark ; but it is not only in the way here pointed out that the position of a Native Sessions Judge in regard to the trial of European British subjects is difficult to defend. It presents a still more striking inconsistency. Under Sections 435—438 Courts of Sessions and District Magistrates have certain powers of revision of the proceedings of inferior Courts conferred upon them. Those powers may be exercised by a Native Sessions Judge or District Magistrate in regard to cases in which European British subjects are concerned, and it consequently follows that though such a Native Officer cannot, under the existing system, himself try a case of that description, he can exercise all other powers of revision connected with it, and under Section 437, direct a further inquiry into any complaint which has been dismissed under Section 203, or into the case of any accused person who has been discharged. If a Native Judicial Officer is fit to exercise not only a general supervision over European officers serving under him, but also powers such as these in regard to the cases of European British subjects already tried by an European officer, it seems difficult to maintain the opinion that he is unfit to try such cases himself.

10. On all these grounds it does not seem to us that the withdrawal of the Bill now before the Legislative Council, although recommended by many persons whose opinions are entitled to great consideration, would afford such

a solution of the question to be determined as it is open to the Government to adopt. The issue which has been distinctly raised by the opponents of that measure is one which cannot be shirked. To withdraw the Bill entirely would determine that issue in a manner inconsistent with the deliberate policy of the Crown and of Parliament; to withdraw it with a declared intention of reintroducing it a few years hence would afford no settlement whatever of the real matter in dispute. We are, therefore, unable to recommend either of these courses to your Lordship.

11. If this view of the subject should commend itself to Her Majesty's Government, it will then remain to determine whether any modifications should be made in the Bill as originally introduced. We approach the consideration of this question with an earnest desire to remove all just cause of uneasiness from the minds of Her Majesty's European British subjects as to the operation of the measure, and to afford them every security in our power against any possible failure of justice. In the discussion in the Legislative Council on the 9th March, Sir S. Bayley said, "The aspect in which I have all along regarded the Bill is that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in District Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions in regard to Assistant Commissioners and Magistrates of the first class I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the local Government might otherwise be at a loss to provide for without serious inconvenience."

12. Looking to the strong feelings of dislike with which Europeans at present regard any extension of the jurisdiction of Native Magistrates over them, it is natural that they should desire that nothing connected with such jurisdiction should be left to the discretion of the Executive Government, and we think that they may reasonably claim that the extent of the jurisdiction and the persons by whom it is to be exercised should be strictly defined by law. We recommend, therefore, that jurisdiction over European British subjects should be conferred only on Native officials while holding either temporarily or permanently the office of District Magistrate or Sessions Judge. The high position of these officers and the long training through which they must have passed before they are appointed to such important posts will afford the greatest possible security for their knowledge, experience, and integrity.

13. The immediate effect of this change in the law will be very limited. Under it only five Native officers at the most will at first obtain jurisdiction over European British subjects, and a period of several years, affording ample opportunity for testing the practical working of the change, will elapse before any considerable number of such officers will become possessed of the powers conferred by this legislation. By this arrangement the appointment of Justices of the Peace from those classes who are at present eligible to the office will not be interfered with, and one objection, which has, with considerable justice, been taken to the Bill as it was originally introduced, will be removed.

14. It has been suggested by the Bombay Government that, by way of compensation for the privilege of which the European British subject would be deprived by the Bill, we should give him the right of being tried by a jury, whenever he is brought before a Sessions Judge. We have carefully considered this suggestion, but we fear that it would involve the further extension of the jury system generally,—a proposal which has, on several occasions, been under the consideration of the Local Governments, and to which the weight of authority has always been opposed.

15. The same Government has also suggested that mixed Benches consisting of an European and a Native should be established for the trial of cases likely to excite race antagonism, but we have satisfied ourselves on inquiry that this proposal would be open to objection on the score of administrative difficulty and expense.

16. It is of course important that facilities should be given for the transfer of a case from one Court to another whenever such a transfer is desirable in the interests of justice. Facilities for this purpose are already provided by Section 526 of the Criminal Procedure Code, but as certain defects have been pointed out in this section, we would avail ourselves of the present opportunity for removing them. Accordingly we would recommend for adoption an amendment suggested by the Chief Justice of Madras, Sir C. Turner, namely, that a High Court should be authorized to exercise the power of transfer given by Section 526 of the Criminal Procedure Code in any case in which it is made to appear that such transfer "is expedient for the ends of justice;" and that in any case in which, prior to the commencement of the hearing, the Government, the complainant, or the accused shall notify to the Court its or his intention to make an application under Section 526, the Court shall be bound to "adjourn the hearing for such reasonable time as may be required to enable an application to be made and an order obtained thereon." This amendment, which will of course apply equally to all cases and to all persons, will be, in our judgment a distinct improvement of the existing law, and will enable any person who may doubt the fitness of the Magistrate before whom his case may come to submit his reasons for such doubt to a High Court, by which they will be fully and fairly considered, and which will have power to grant such relief as the circumstances may require. The security thus afforded will be of the amplest kind.

17. We recommend, therefore, that the Bill be amended by omitting Section 1, and thus leaving unchanged the present powers of Local Governments with respect to the appointment of Justices of the Peace, and by adding a section embodying the proposals of Sir Charles Turner, to which we have referred. Section 7, which contains a provision ancillary to Section 1, will also have to be omitted. The Bill in this modified form will, on the one hand, remove from those Natives of India who have risen to high and responsible positions in the service the disqualification imposed on them by the existing law, and will, on the other hand, make the fact of having risen to such a position the test of fitness in the case of those Natives on whom jurisdiction over Europeans is to be conferred. And it will supply to European and Natives alike every reasonable facility for having his case transferred to another Court where such a transfer is desirable in the interests of justice.

18. Our Honourable Colleague, Lieutenant-General Wilson, dissents from these proposals, and recommends that the Bill should be withdrawn. He has recorded his views in a Minute, of which a copy is annexed.

We have, &c.,
(Signed) RIPON.
D. M. STEWART.
E. BARING.
T. F. WILSON.
C. P. ILBERT.
S. C. BAYLEY.
T. C. HOPE.

NO. 2.

MINUTE by Lieutenant-General the HONOURABLE T. F. WILSON, C.B., C.I.E.,
dated 10th August 1883.

WITH regret I dissent from the recommendations made by His Excellency the Viceroy and my Honourable Colleagues, and feel obliged to repeat the opinion recorded in the Despatch, No. 33, of the 9th September 1882, "that the Honourable Lieutenant-General Wilson would maintain the law as it now stands, objecting to any change affecting the position of British subjects in India."

I fully recognize my isolated and responsible position with regard to the highly important question under consideration, and desire briefly to explain my reasons for holding the opinion I do.

I am unable to convince myself that the passing of the proposed Bill will add to the efficient and impartial administration of justice, or be otherwise than more or less dangerous to the liberties and interests of many of Her Majesty's British subjects in India, notwithstanding that the measure be surrounded, as is suggested, with safeguards.

I am in no way influenced by race qualification or distinctions, or a desire to retain privileges in favour of my countrymen. I base my objections wholly on a belief that it is necessary to introduce the declared policy of the Queen-Empress and Parliament gradually, and with caution; and that at present Natives of India cannot safely be trusted in the interior of the country with the very responsible duty of trying European British subjects on criminal charges, and this conviction is, I consider, supported by the weight of the official replies which have been received, more especially from Bengal and Assam (where European settlers mostly reside), and the majority of the Judges and the administrative officers scattered over India.

Further, so far as can be ascertained from the official reports furnished, no present administrative difficulties exist. Legislation is therefore not needed.

It is very desirable to put an immediate end to the mischievous excitement which now prevails; and this, in my judgment, will best be effected by withdrawing the Bill.

(Signed) T. F. WILSON.

No. 3.

PROCEEDINGS of a Public Meeting held in the Town Hall, Calcutta, on the 28th February 1883, in connection with THE CRIMINAL PROCEDURE CODE AMENDMENT BILL.

To say that the public meeting held yesterday afternoon in the Town Hall, to protest against Mr. Ilbert's scandalous Bill for the amendment of the Criminal Procedure Code, was unprecedented as regards both numbers and excitement, would be to give but an inadequate idea of a demonstration of popular feeling which must have surprised even those who were most fully impressed with the deep and widespread indignation created by the proposed measure.

Business in the European portion of the city was suspended from an early hour in the afternoon, and long before the time appointed for the meeting the approaches to the Town Hall were thronged with carriages and foot passengers. By a quarter to four o'clock the whole of the centre of the hall was filled, and ten minutes later the whole room was simply one mass of human beings from wall to wall. By this time upwards of eighteen hundred cards had been delivered at the doors, and probably not less than three thousand persons were actually present. In this vast crowd the domiciled Anglo-Indian and Eurasian were no less strongly represented than the British community, while foreign Europeans, Armenians, and Jews also mustered in force. Nor was the demonstration confined, as has hitherto been the case with political meetings, to the non-official community. A large number of the Covenanted Civil Servants of the Government, and Officers of Her Majesty's Army, besides Uncovenanted Government servants of all ranks, were also present to testify their condemnation of the Government policy.

And never was policy condemned in a more emphatic manner. Sentence after sentence of the indignant and spirited speeches delivered was greeted with a perfect furore of applause; while the mention of certain unpopular persons and opinions was followed from time to time by storms of groans and hisses indicative of a state of popular feeling which has not existed in Calcutta within the memory of the present generation. We give below a report of the speeches, though, owing to the length of the proceedings and the

lateness of the hour at which the meeting broke up, we are unable to make it so perfect as we could have wished.

The proceedings terminated with three cheers for the Queen, followed by the National Anthem.

We understand that all the hotels were filled during the day with residents from the neighbouring districts, who had come into the town to take part in the demonstration.

The Sheriff, Mr. ROBERT MILLER, in opening the proceedings, said :—Gentlemen,—In obedience to a requisition signed by a very large number of the European residents of this city, I have, as the Sheriff of Calcutta, convened the meeting which has here assembled to-day. Whatever might have been my own opinion as to the object or purport of this public demonstration, the number and the reputation and the weight of the names at the foot of the requisition which was served upon me would have left no alternative but to convene this meeting of the European citizens of Calcutta; and if there had been any doubt in my mind, which there was not, as to the unanimity of the demand for a public meeting, it would now have been dissipated completely.

The object of this meeting is to demonstrate to the Government of this country, and to the Secretary of State, who is responsible to Parliament, and, if need be, to Parliament itself, the opinions and feelings of those who would be affected by the alteration of the law which has been proposed.

The necessity for this form of argument is greatly to be regretted, for one result of it is to stimulate and inflame those same race feelings and antagonism which are so much to be deprecated. It is the more to be regretted because, unavoidable now, it might have been escaped if those who are responsible for having suggested the matter to the present Government had forewarned them at the same time of the strenuous and determined opposition the measure was certain to evoke on the part of that section of the inhabitants of India who are affected by it.

Gentlemen, I take the chair to-day simply as the Sheriff. I do not propose to address you or to discuss the subject concerning which you have assembled, because it may fall to me to speak upon it if it comes up for the consideration of the Legislative Council. While the expression of your feelings and opinions now will inform the Government fully on a subject on which they seem to have been misinformed, they will also give weight and authority to me if it should be necessary to oppose the Bill in Council.

In leaving, as I now do, other speakers to come forward to represent the views of the European residents of Calcutta, I would only remind you, though it seems hardly necessary, of the chief object of opposing this law. It is to prevent the growth of that feeling of race antagonism which you believe will be aggravated if the measure is forced through in spite of the unanimous opposition it meets with from Europeans. This object can best be secured by a temperate statement of argument, by setting forth the reasons which stand against the Bill, and the fact of your own strenuous opposition to it, calmly, and in a manner which will not perpetuate that ill feeling which it is our unanimous and sincere desire to efface.

I have before me a pile, and it might be a larger one, if I had brought all that I have received, of letters and telegrams from all parts of India; from the Punjab, from the North-West Provinces, from Assam, Cachar, Central India; and if I were to read them all, it would take more than an hour of your time.

I now call upon Mr. Keswick to move the first Resolution.

Mr. KESWICK said :—Mr. Chairman and Gentlemen,—In proposing the first resolution, I would say that the Bill to amend the Criminal Procedure Code, which we are met here to consider, will, if passed, be a most serious thing for European British subjects in this country. In the Mofussil Europeans will be at the mercy of false charges, supported by bribery and corruption. In the time here of most of us we have seen cases against Europeans brought down from the Mofussil in which the Native police, with the assistance of false witnesses, have worked up the most damning evidence, the falseness of which only the ability of counsel procurable in the capital has been able to lay bare! Do you think that Native Judges will by three or four years' residence in England become so Europeanized in nature and

in character, that they will be able to judge as well in false charges against Europeans as if they themselves were Europeans bred and born? Can the Ethiopian change his skin or the leopard his spots? We have not forgotten what occurred in a certain police case arising out of the late Municipal elections, nor yet what has befallen a certain percentage of the Covenanted Native Civilians. Shall it be said that the Government hath not known, that the Government does not consider? Once do away with the distinction which prevents European British subjects in the Mofussil being subjected to Natives, and you know not where the subjection will stop. The Native press, which is now clamouring for Natives to have the power of punishing Europeans, does not wish this power, for which Mr. Gupta has been the prime mover, to be confined to him and a few others. At present the exercise of jurisdiction over European British subjects in the Mofussil is confined to those who are European British subjects themselves; but if this new Bill be passed Natives who are members of the Covenanted Civil Service, who are members of the Native Civil Service constituted under the statutory rules, or who are Assistant Commissioners in Non-Regulation Provinces, will have the power of trying and imprisoning Europeans. There is to be no distinction in the law between European and Native officers. The Native press boldly says, "We are not content with this; it is a halting measure which does not please us. Why should not a Deputy Magistrate have the power of trying an European British subject? If Deputy Magistrates are fit to try Native offenders they are equally fit to try European offenders, and it is intolerable that such a distinction should be allowed to exist. Let all our Judges, whether of the Covenanted or Uncovenanted Service, try all classes of offenders, Europeans or Natives alike; if they are good to be Judges of one class of offenders they are good for the other class; let there be no race distinction whatever. Let us not rest until the last remaining trace of foreign subjection be done away with."

It is quite clear then that the measures of the Bill will not please the Natives at large, and it is unbecoming of Bengalis who have done so little for themselves to clamour in this way. What would they have been to-day had the British not taken the country? What would they be to-morrow were the British to clear out of it bag and baggage? The education which Government has given them, and which they use chiefly to taunt it in a discontented spirit, would not put courage enough into their hearts to defend their own hearths and homes, and these men, for a description of whose nature, and for the characteristics of whose crimes, I would refer you to Dr. Chevers' book of Medical Jurisprudence, now cry out for power to sit in judgment on and condemn the lion-hearted race whose bravery and whose blood have made their country what it is, and raised them to what they are.

Take heed that it is not those who will come under the law, but those who wish to administer it, who desire the change. Europeans and Natives who will be affected by the change do not want it. In fact it has been asked of the Government by a representative Native that Habeas Corpus be extended to the Natives, that they too may have the right to be brought to Calcutta and tried by the High Court.

About the invidiousness of the Act as it at present stands, of which we hear so much, I must confess I do not see the invidiousness. Had we a clamour on the part of Natives to be tried by Natives only, and not by Europeans, as Europeans are at present tried by Europeans only and not by Natives, then there would be something of reason in it, though much of surprise, knowing as we do that Natives in the Mofussil prefer an European Judge to one of their own race, because of his being beyond bribery and the partiality born of village influences too numerous to describe.

What good is it going to do Natives to be able to try Englishmen in the Mofussil? Do they think that once this privilege is gained a change in the political relations between the two races will follow, and that they will occupy all the high offices of State, be Commissioners of Divisions, Members of the Board of Revenue, and Chief Commissioners of Provinces, and that they will see filled from their ranks the posts of Lieutenant Governors, Governors of Presidencies, Ministers of Finance, Commanders-in-Chief, and that of the Viceroy himself? Till these be obtained the last remaining traces

of foreign subjection, for the erasure of which a few Bengali civilians sigh and long, will not have been done away with. Should the policy of the Government be to make unlimited concessions, it will no doubt secure the approval of the Native press so long as it can continue to make them, that press which had so lately to be restrained to prevent it sowing the seeds of disloyalty and sedition broadcast over the land, and which so vilely slandered the best Queen the world has yet seen. By such pandering to its wishes, its tones of abuse can no doubt be changed to pæans of praise, but has the Government confidence enough to show its trust all through, and sink the distinction between Natives and Europeans as much in a military as in a civil sense? Has it such confidence in Natives as to do away with the Arms Act and place the weapons in their hands, feeling sure that they will use them as loyally as if in the hands of Europeans? Let Government answer. Mr. Ilbert, in introducing the Bill, stated that the only object in view was to provide for the impartial and effectual administration of justice, but we had thought and hoped that justice was already impartially and effectually administered, and were and are readier to trust our cases to European than to Native Judges. If the number of European offenders in the Mofussil were legion, and Government felt it necessary to use the material at hand to put them down, one could make allowance for so harsh and inconsiderate a measure, but Europeans in this country are law-abiding, and it is no burden on European Magistrates to try the few cases that arise.

An Englishman and a civilian remarked the other day that he did not think the change proposed in the law could do much harm, as there was always the right of appeal. Do not be deceived. Away in the interior of the country, where Europeans are few and scattered, where their interests and those of Natives often clash, and where false witnesses can be hired at four annas per head, your brother or his wife, or his daughter, or your sister, it may be, may be convicted on the evidence of perjured villains and lie in prison for a month before released on appeal to Calcutta. A Native Judge, by reason of the conditions of his early nurture and early surroundings, by the fact that he has had no high principles inculcated during his infancy by an educated mother, and by the fact that, to thoroughly understand European nature, it is necessary to have that nature innate, is unfitted, when trying an European, to put himself in his place, and to judge, from an European standpoint, of the likelihood or not of his having committed the crime of which charged.

When Natives have so far advanced that the wives and sisters, daughters, and mothers of those of the ranks from which our Native civilians are drawn can come openly into Court and give evidence, and can mix with us and with our wives in society, then there will be so much of each other's innate nature known that Government may seriously consider about giving Natives the powers they now ask, but till then let us follow the examples of our predecessors in this country and maintain the rights of Englishmen.

We have all seen the opinions of the various Local Governments and Government officers on the proposed Bill, and must have blushed for our rulers, who have lately been trying to make us believe that they highly value the views of the public on Government measures. We saw that they published opinions of their own servants without first getting them to take the slightest trouble to learn the views of the non-official Europeans under them whom the change in the law will chiefly affect. If the opinions of the governing and not of the governed are to be taken, why go through the farce of consulting the latter? But we of the latter class must make ourselves heard, and oppose in every legal way a measure which is so widely condemned. God knows we are heavily enough taxed; that Government never shrinks and never ceases from making demands upon us; that not only are we taxed here, but cannot go home for more than six months without having to pay income tax there, and yet we are the people on whom an unnecessary law is tried to be forced, not by the Government here alone, but with the knowledge of the Secretary of State for India.

From every district in the Mofussil protests are continually arriving against the proposed Bill. Are Europeans who have come to this country, embarked their capital, and, in spite of discouraging Government restric-

tions, opened out new fields of profitable employment for millions of Natives and added largely to the revenues of the Empire, to be cared so little for by Government that it would rather do them a grave injury, and alienate their respect, than disappoint a few Native civilians who think it would raise their social position to be able to sit in judgment on European British subjects in the Mofussil? We have seen telegrams about what the Secretary of State has said at home, and feel that he cannot have been informed of the feelings of Europeans and of non-official Natives in this matter. It is evident he does not know that, to please a handful of Native civilians—I think the number covenanted has reached six—our rulers here are risking the confidence of all the non-official, and nine-tenths of the official, Europeans. The Government has lately been showing a desire to attract British capital to this country that its resources might be developed, and it is now taking a step which will make every non-official European in the Mofussil feel a sense of insecurity and undo much of the great good work begun.

I am sure we are glad to see the unanimity of the English press in this country in condemning this new Government measure. It is true the "Statesman" is for it. He who pays the piper has the right to call the tune, and it is well known who has the right to call the "Statesman's" tune at present.

The attitude which Government here is assuming makes it probable that the Bill will have to be brought before Parliament, and all who have friends or acquaintances in either House should be careful to fully inform them regarding the harm it would be calculated to do if made law, and of the public feeling there is against it.

I am no hater of Natives. I have many friends among them, and highly value their friendship. I admire their virtues and some of their ambitions. I know that with Government aid they can achieve many things, but it will be the far future before they can achieve a position of confidence in the hearts of non-official Europeans as Judges of a race whose nature and whose characteristics they are unable as yet to understand.

The speaker then moved the first Resolution, which was as follows:—

"That, in the opinion of this meeting, the Bill for the amendment of the Criminal Procedure Code is unnecessary in the interests of justice; uncalled for by any administrative difficulty; based on no sound principle; founded on no experience; whilst forfeiting a much valued and prized and time-honoured privilege of European British subjects, it confers no benefit upon Natives; whilst imperilling the liberties of European British subjects, it in no way affords any additional protection to Natives; it will deter the investment of British capital in the country by giving rise to a feeling of insecurity as to the liberties and safety of the European British subjects employed in the Mofussil, and also of their wives and daughters, and it has already stirred up on both sides a feeling of race antagonism and jealousy such as has never been aroused since the Mutiny of 1857."

Mr. BRANSON, who, on rising, was greeted with loud cheers, said:—Mr. Chairman, Ladies and Gentlemen,—I rise to second this Resolution with feelings of the greatest anxiety and the deepest responsibility, because I feel that no man in my position can speak upon this subject without saying things which must give annoyance to many Natives who do not desire, and have not asked for, this unfortunate disturbance. (Hear, hear.) This Resolution wants no argument at my hands to commend it to your entire and most hearty acceptance. I don't think I can give you any fresh or further arguments than those which have been put before you in the stirring address which has just been sounding in our ears. I don't think that I can suggest new arguments beyond those which the many thinking men have already given expression to in the press with such wonderful unanimity, and with but one recreant amongst it in what it had told you. But at the same time I feel that I should be excused if, with my experience of the country, with the reputation for fairness which I hope I have gained, not only in this metropolis, but in this Presidency, and as one who is conversant with the making of the Courts and with the administration of justice,—if I or such a one would put before you, with such force as I can command, such arguments as you may not have already heard, or such as might commend themselves to me. (Applause.) But

before I proceed I cannot abstain from expressing my deep, my very deep, regret that this apple of discord should have been thus wilfully hurled against us. (Loud applause.) I think it is a great calamity that our rulers should thoughtlessly, if not otherwise—should have thoughtlessly, at least, promoted this terrific strife, for this proposal has turned the country back a quarter of a century. I would even, in addressing you, abstain from casting any blame upon any one in this matter; but I cannot abstain from casting blame upon those who, in responsible positions, have, as it were, stirred up all this tumult needlessly—needlessly altogether to that (applause)—wilfully, for they put class against class, and I can only hope that it may have been in ignorance and in thoughtlessness. But, gentlemen, I cannot, as I say, abstain from casting heavy blame upon those who are our rulers, and for this reason; gentlemen, it is an axiom in politics that if there is one thing about which we are more careful than another, it is the administration of criminal justice, and the reason is not far to seek. It lies in this, that the Criminal Judge has a double power—he has the power, first, of robbing you of your liberty, and he has the power next to stain your character. (Applause.) The robbing of your liberty is a matter which can be well understood by the commonest mind, if not to the same extent, at all events in the same way, as it can be by the most cultivated or refined. That deprivation of liberty affects every man, but it affects naturally more those in whom there was an inborn love of freedom. (Applause.) Reputation, too, is dear to every man, but can any one be so blind as to say that his reputation is as dear to the Native as to the Englishman? (Applause.) Now, a freeborn nation loves its freedom, and it would be judged, not by a nation steeped in the tradition of the conquered, but by a nation glorious in the tradition of conquerors. (Loud applause.) Is it, then, to be wondered at that Englishmen protest that they are not to be tried, that they will not hand over the custody of their liberties to such a nation as the Hindus of India? (Applause.) That being so, will you not have thought that any Englishman, whatever his position, whatever his rank, would have hesitated, would have pondered deeply and long, and would have searched far and wide for information, before he suggested that there should be introduced a law, not to take away an Englishman's privilege—I care not for a privilege—but his right, an Englishman's right. (Thunders of applause.) I have a privilege when I have a thing given to me, but that is not a right. When you say that I have a privilege, *prima facie* I am not entitled to it, but when I say I have a right, I have a thing which I claim as my own thing, which you have no right to take from me, and which I am bound to defend with my life. (Applause.) The mind of a nation, it has been said by a great man, grows but slowly. I mean the mind of a nation as it affects its daily life, as it affects the life of the men who are its component parts. You may have external progress. Material progress may help men forward, as in this country Mr. Keswick has pointed out it has been done by material causes. The mind of a nation must be a growth from within, but you cannot by law force upon it unknown institutions, unknown modes of thought, or educate a Native up to the standard of a nation which has been trained in truth and honesty, and in love before God—in faith, truth, and in a true religion. (Applause.) You cannot suddenly educate a Hindu into a full appreciation of his freedom. You cannot teach him, I say, to value it as men value it whose heritage it has been, whose fathers' it was, and who can look back into the dim past, and say, as we can say, "Britons were and ever will be free." Look at the history of India. Here you have a country that has been from all historical times, I say, the victim of one conquering nation or another. The conquered have hated the conquerors, and these conquerors have held only until some mightier hand has come to displace them, and then these conquerors, conquered in their turn, have hated their conquerors with an intense hate, which unmistakeably characterizes the races in India who stand in that position. I speak not of the Muhammedans. You are not so blind to reason, at all events you are not so blind to the teachings of history, you are not so ignorant of the nature of that people as to suppose that they don't hate us, as those who have filched from their hands the rich prize which they thought to have enjoyed themselves. (Applause.) You have, then, in the Hindus a subject race with a profound

hatred of their subjugators. Under these circumstances, is it wonderful that we should protest, that we should say that these men are not to rule over us, that these men cannot judge us?—that we are not to be judged by them? (Cries of “no,” “no,” and loud and vehement clapping and cheers, and cries of “no,” “no, we will not be judged by them.”) Thank you, that is right, that is the way to reach our rulers. If you like to shout, shout like the Athenians that you are ready to go against Philip, and that you will conquer or you will die. But if you do so, do so calmly and dispassionately, have the courage to submit to law, but impress our rulers with the intenseness of your feelings on the subject. Now, gentlemen, who can doubt the sense of this great body here assembled? Who can doubt their feelings on the subject? And can you understand, can you fathom, the dismal depth of the ignorance which did not know of the existence of the feelings? (Applause.) You have been told by Mr. Keswick, and you have read it in the papers, that sanction from home has been obtained to the passing of this Bill. Gentlemen, can you believe that that sanction would have been obtained had the Government of India written to the Government at home, informing them that the taking away the right would provoke the very bitterest resentment, the very deepest excitement and feeling, bordering upon frenzy, among loyal and most peaceable citizens? (loud applause) if to that statement there had been added this further statement, which is true, that the change is utterly unneeded. No administrative difficulty is felt, and so long as we hold this country it is absolutely certain that there must be in every district in it one European fit to try these cases. There is no necessity whatever to confer this jurisdiction to try these men, these loyal and well-behaved citizens; there is no need whatever to vest Natives with this authority, and no necessity whatever to do away with sentimental differences which rankle in the minds of a few blatant Bengali Babus. (Shouts of applause.) While then, I, on one hand, do not seek to impute any motive whatever which is unworthy, for I have no reason to impute such motives, while I seek to impute no motive, which is unworthy, to our rulers, I cannot acquit them of the most serious blame. It may be it is the result of a most unfortunate state of things; it may be that our rulers live so entirely away from us, when the Viceroy and his select advisers are carried away some 2,000 miles into the hills, that they know nothing of our state of feeling (hear, hear), and are in the most utter ignorance of what our true wants are. “I can say, and I have thought the matter carefully over, that I see no reason whatever for this change—no reason whatever except, as I have said, a sentimental idea of taking away a grievance which a Bengali Babu felt, and which that Bengali Babu, with his faults, wants to see taken away, that he may have the gratification of putting his foot down, safe under the shelter of British arms and of judging “cowards.” Ah, we grant we are cowards. (Shouts of derision, cheers and sensation.) Truly and verily, the jackass kicketh at the lion. (Thunders of applause.) Show him as you value your liberties; show him that the lion is not dead; he sleepeth, and in God’s name let him dread the awakening. (Cheers and shouts from all sides.) I have said there was no reason for this, and let me read to you an extract from a speech of that most able man, because his ability no one can doubt—Mr. Ilbert. He is in the Council of the nation. (Here groans and hisses from all parts of the hall, which continued for some minutes.) No, no, no, you must not hiss him. If he had the smallest knowledge, if he had the shadow of an idea that he was provoking all this excitement, and if he had been better instructed, he would never have made this mistake. (Thunders of applause.) Hear what he says in introducing this Bill. He said: “As to the object at which we ought to “aim there will be no difference of opinion.” God knows there is none amongst us here. “It is simply the effectual and impartial administration of “justice, and as to the facts with which we have to deal, no one who has “studied the statistics and reports of the cases involving charges against “European British subjects can fail to be struck with two things.” Now mark the words “two things.” “First, as compared with the great mass of “ordinary criminal business they are extremely rare; and secondly, that “they are exceptionally troublesome and difficult.” Hear that; there were two things, first that they were “extremely rare,” and secondly, they were

“exceptionally troublesome and difficult.” Now, if the learned and Honourable Member had been seeking to bring forward arguments why this Bill should not be passed, I challenge him to produce two better arguments than these. (Applause.) He then proceeds to say that these two peculiarities show “that in the interests of an effectual and impartial administration of justice, it is not necessary, and in the same interests is not desirable, to clothe all Magistrates indiscriminately with the power of dealing with these cases.” He goes on to speak of cases involved in the trial of European British subjects as a class of offences presenting features of exceptional difficulty. But the cream has yet to come. He continues:—

“It involves no disrespect to the magisterial or judicial office to say that an officer who may be fully competent to dispose of a common case of theft or assault may not be competent to dispose of a class of cases which, as will be admitted by all impartial persons, are apt to put an exceptionally severe strain on the judicial qualities of tact, judgment, patience, and impartiality.”

Talk of tact, judgment, and impartiality. These are the qualities you want, and if we, and if you, will search for them in the wide world, where will you find them but in the person of Behary Lall Gupta! (Applause and laughter.) You have civil servants who have borne honoured names in many tribunals, but if you want “exceptional tact, judgment, patience, and impartiality,” you must throw them over and go to the Bengali Babu. (Cries of no, no, and applause.) In judging of these qualities he ignores altogether the possibility of these Judges being influenced by race or class hatred, and we would have thought that these ought to have been taken into consideration first, but instead of that it was left out altogether. He proceeds to say:—“We are of opinion that no change in the law can be satisfactory or stable which fails to remove at once and completely from the Code every judicial disqualification which is based merely on race distinctions.”

It is not to be stable until every disqualification based on race distinctions has been removed. It will not be satisfactory until you, gentlemen, under a false charge of murder such as was brought against Mr. Stevens in the High Court, may be placed. Many of you are new to the country, and I will tell you the facts. He was charged with murder and beating a man, and the charge wound up with this, that he turned to his jemadar and said:—“That fellow is so beaten that he will not live; take a stone, and beat him on the head to prevent him from bringing a false charge;” and it was so done, at least so it was said it was done. Now, mind, any one of you may be placed in the same position, though Stevens was acquitted; and the object of this, if all race distinction is to be done away with, is that you cannot claim to be tried by a British jury of nine men. You may have to stand your trial for your neck before nine intelligent Bengali Babus. (Cheers and derisive laughter.) Now, we are not unreasonable people, as is abundantly apparent from what took place a little over eleven years ago. Then it was thought that there was an evil in the law which enacted that every Englishman, for whatever offence accused, except paltry ones which might be punished with a fine, should be brought to Calcutta and tried in the High Court. It was said that there were many far outlying districts from which it would be absurd to bring down an Englishman charged with crimes punishable with one week’s imprisonment to the High Court for trial. I do not say that the law then passed was a just, or a legal one. My own opinion as a lawyer is that you cannot take away the rights Englishmen have acquired in England by any legislation in this country.

I do not think our Parliament ever intended that any law would be passed which is to that extent antagonistic to the laws of our own country; but still the fact that this is so itself shows what a reasonable, law-abiding people we are. It shows that when it was put before the British that this was an administrative difficulty; did they raise an objection? It was then shown that it was proposed to give to our countrymen a small power to try European British subjects for minor offences punishable with one year’s imprisonment by a Sessions Judge, and three months by a Magistrate. That commended itself to the reason of the people, and although they might have fought justly against it, they did not. Now, it was said this morning,

and clearly, by an inspired writer in that excellent journal, the "Statesman" (prolonged hisses), that we are to be guided on questions of our rights not by the wishes and opinions of the British, but by the opinions and wishes of the Natives, in this change that is now proposed to be introduced. I say that is not justified by one single circumstance. I fail to find one single argument in the speech put forward by the Honourable Mr. Ilbert which would commend this proposition to any reasonable man—certainly not to the mind of an Englishman. It does seem to me that we have fallen on evil times when so unpatriotic, un-English a speech could be delivered by an Englishman in any country. The only argument which I have heard suggested is this, which had been said to him by a Bengali Baboo:—"Why, your countrymen, who don't understand our motives, who are not cognizant of our ways, they try us, and the result is that there is a constant failure of justice; therefore why should not Bengalis also try Englishmen." The argument amounted to this:—"Let a number of Englishmen be tried by Bengalis and have a failure of justice." Don't you admire the argument? Two injustices make one justice. (Cheers.) I think he was thinking of Native justice. (Cheers.) Well, gentlemen, I have pointed out to you that the desire to remove anomalies will not in any way be justified by the passing of this Bill. As has been pointed out by Mr. Keswick, there exists at this present moment this anomaly, that our own fair ladies are to be carried into Court to be gazed at by the multitude, but their own ladies are entitled by law to hide behind a screen, and there to give their evidence; and they have the further privilege that their men themselves claim that they are entitled to be protected from appearing in Court. I have only this day seen the records of a case where a Native Chief, who was a rich man and possessed unlimited means, in order to avoid being examined by a commission and give his evidence in a case in which a European was concerned, evidence which must be fatal to his case, wandered about the country from Bettiah to Benares, and from Benares to Allahabad, and from Allahabad to Calcutta, and then back to Benares, and every commission taken out for his examination was sent only to find that the bird had flown. And this man enjoyed the privilege of exemption from appearance in Court. That is an administrative difficulty. Are the English people asking the Government to do away with that anomaly? That is a privilege conferred upon him; it is not a right which is an inalienable heritage, as our is, viz., to be tried by our own countrymen. (Cheers.) Gentlemen, I should not be doing my duty if I did not call upon you to protest against the surrender of your rights to those whose duty it is, as it ought to be their pleasure, to conserve your rights. It is my duty to call upon you to let your voice be heard, that the proposers of these disloyal doctrines may cease to preach them, and that the people in England may be stirred up and see that we are standing here in defence of our rights, and that we should call upon our brethren in England to appeal to the House of Commons to save our wives, and daughters, and sisters from being tried by those who cannot understand their motives and their actions, and who will misunderstand them, and in whose justice we cannot have, and have not any faith. (Cheers.) I have said there is no reason given in Mr. Ilbert's speech for bringing forward this measure. But I want, with your permission, to put before you the opinion of some of those whose opinion was asked. I say it does seem extraordinary, in the highest degree, on a perusal of some of these opinions, that there should have been in the minds of our governors such entire ignorance of our feelings, on the subject of the feelings of Englishmen. And can you imagine the blindness of our governors when they had the opportunity of consulting our Lieutenant Governor and the Judges of the High Court of Bengal, and that they did not go to those excellent and able advisers, Mr. Evans and Mr. Miller, who are in their own Council, and say,—“Here is a Bill attempting to deal with the rights of Englishmen; tell us whether it will be accepted or not.” Is it not a pity that before deciding upon it they did not go and consult them? Is it not like applying a telescope to the blind eye? Let me read you a few short extracts from these papers. First, the opinion of Mr. Carmichael, a member of the Madras Government. He said:—“It is important to notice Mr. Gupta's mistake, because, if we were going now for the first time to try British subjects in the Mofussil, it would be

“difficult to defend the propriety of limiting the jurisdiction to British officials; but the case is different where it is proposed to legislate towards the forfeiture of an ancient privilege, dating perhaps—at any rate, this is the common superstition—from Magna Charta, which declares that no Englishman shall be condemned except *per legale judicium parium*.”

He went on to say:—

“After all, there is such a thing as *privilege*; this one is highly valued by those who possess it, and certainly does no harm to the Native population, while its surrender would, in my opinion, cause great exasperation, perhaps accompanied with much political mischief, amongst Her Majesty’s natural-born subjects, their children and grandchildren, lawfully begotten, who now constitute the privileged class.”

These were the words of wisdom and the words of common sense, and I cannot help wondering how they failed to impress themselves on the Government. (Cheers.)

Again, Mr. Huddleston said:—

“I concur in opinion with my honourable colleague, Mr. Carmichael, that the proposed extension of jurisdiction would be impolitic, and is not expedient; and I would note that Section 3, Act II. of 1869, which empowers the Government of India and Local Governments to appoint such and so many of the Covenanted Civil Servants of the Crown in India or *other British* inhabitants to be Justices of the Peace in British India beyond the Presidency towns (in which *any* persons not subjects of a foreign State may be so appointed), distinctly contemplated that the Covenanted Civil Servants would be *British* inhabitants. It was clearly not anticipated or perceived that the contrary might be the case.”

“The position of the Presidency towns, with their European population and *Bar*, is essentially different from that of a Mofussil Court, where, in this Presidency at least, the *accused* might very probably be the only European British subject within a circuit of a hundred miles, and, with all due recognition of the merits of the Native members of the Covenanted Service, I do not think the position would be a fair one. I am confident it would raise an outcry that would aggravate race friction far more than the removal of the *already existing* disability attaching to a small number of officials would allay it.”

These, again, were golden words. Again, Mr. Huddleston, writing on the subject, after pointing out the disingenuous way in which extracts from speeches in favour of the measure were put before the Government, proceeded to refer to a certain Minute of Sir John Strachey, which is worthy of your consideration, and his opinion was that the law should be passed as it was in 1872, and not as it is now contemplated.

Mr. Howell said:—

“Mr. Gupta refers to the discussion of 1872, and says that nothing can be added to the eloquence or the sound reasoning of those who argued then in favour of the view which he advances now. He adds that the arguments of 1872 in favour of his view presented themselves with redoubled force in 1882, and that ‘they are too obvious to require mention.’” Still he does mention them, and at length, in skilfully arranged “extracts for ready reference,” and then he gives a reason, due to a recent but “important change” in the constitution of the Covenanted Civil Service, why there is admittedly less force in those arguments now than there was ten years ago.

To this I reply that, if the arguments in favour of Mr. Gupta’s view are all that they are represented to be, how is it that they were in the minority in 1872?

Mr. Gupta attempts to make a point in the composition of that minority, but when I find Sir J. Stephen and Sir John Strachey voting on the same side, and that side the majority, it is idle to say that the arguments against which they voted are ‘too obvious to require mention.’ Mr. Gupta cites the authority of the late Lieutenant Governor of Bengal (Sir George Campbell), who voted with the minority, but Mr. Gupta fails to notice in his extract, or even to allude to Sir George Campbell’s admission, that he seldom had greater doubt and difficulty in making up his mind, and that when he did vote for

the amendment, it was on the express ground that "it appeared to His Honour "that what was now proposed was a minimum of change."

There were many other extracts from that letter which I might quote, but time presses. They are before the Government, and you, I flatter myself, want no convincing. Gentlemen, it is asked that you shall give up your right to be tried by your countrymen. This is a notorious country, in which the utmost ingenuity is ever straining to collect and bring false charges. What the stiletto is to the Italian, a false charge is to the Bengalee. *He loves it.

It is a weapon he loves, and a facile tongue enables him to use this weapon with the most fatal and truest precision, and we ask that we should not be cast hand and foot among these men with their stilettos of false charges. Look at the position of an Englishman in a remote province like Cachar, brought up from a tea garden before an Assistant Commissioner, and there subjected to examination at his hands with all that insolence which cowards are capable of when they think that their enemy is in their power. It is more than sentiment; it is a sacred charge of a sacred duty. Many of you have brought from some fair English home a girl for your wife who was entrusted to your hands and to your protection by a confiding father or a loving brother. You have brought her from a condition which ensured that she would never be brought up for trial except before one of her countrymen, and if you give in now you are betrayers of that sacred trust. (Indignant cheers, with cries of "No, no.") It is not that I fear for my countrymen alone; it is not even for the evils which may befall them simply by being tried. But I cannot help looking forward to the future, to what might be the effect if the husband of the woman who was being tried, wrought up to a pitch of the wildest excitement, went into the Court. God knows what may be the consequences, and it is to guard the people of this country from these terrible things that I call upon you to raise your voices and to protest with all your might. (Loud and continued applause.) Gentlemen, it has been well said that every person who either is the possessor of power or is a candidate for power thinks he can use it well. Let me read to you from the work of a great lawyer on this point [extract read]; and the writer gives a number of instances in which our own countrymen had laid claim to power, and shows how grossly that power had, even by Englishmen, been abused. But, gentlemen, let me say another word on another subject. It is said that the present Government has the exceptional privilege of having at its head a distinguished statesman, of whom, however much we might differ from him, every Englishman must be justly proud. Let me read the words of that statesman on the subject of how England should proceed on an occasion of this kind. Mr. Gladstone, in his famous speech at Greenwich in the autumn of 1871, when he stood up to defend his Government in the matter of army purchase and other matters, said [extract read]. Now, do you not think those words might have been taken to heart by our rulers before they introduced this measure? I say it not as my own opinion, but that of a great lawyer. You have no right to interfere with the rights of a people—an opinion of one who met with his death in this Town Hall at the hands of one of the people of this very country—(great sensation)—one of that very country whom it is proposed to set over us. Let me read to you Mr. Norman's view of the right which every British subject enjoys [extract read]. Now this is an unmistakeable endeavour to deprive us of our rights, and I say there is no power in the Government to do that. (Loud cheers.) It has been well said that there is a point at which allegiance itself may stop. I do not say you have come to this point. But what I am coward enough to fear is this, lest this measure should provoke reprisals, lest further legislation should forfeit allegiance, and the country be drenched in civil war. We know that if you have strong determined men to deal with, they will have their way. We who have read history know what happened when the niggers of the Southern States of America got privileges over their white brethren. We know how they went imploring on their knees to Congress to take away the privileges which were such a burden to them. Now, gentlemen, the occasion has come when you must say whether you are going to surrender your rights. Swear by all that is sacred that you will not. (Loud and continued cheers and cries of "We will not.") Let your voices be heard, and let the Government have no

excuse for saying that they did not know of your determination. Let them be assured that you will stand by yourselves to a man (thundering applause)—stand up in defence of those who were dear to you, their lives and health and wealth and everything God has given you on earth. (Cheers.) Stop at nothing that is lawful. Remember what your great British Prime Minister said at Midlothian. I say go as far as you can lawfully. Do no wrong. Show yourselves strong men, able to protect your rights, and knowing how to use them; do not compromise yourselves. Do not allow yourselves to be blinded by anything. Hold to your right; fight for them by every lawful means. Tell your Governor General that he has been misled; tell him that he lives away from you and knows you not. You yourselves have yourselves greatly to blame in this matter. Once before was it given me to address you in this Hall, but not to anything like this large body. You are immersed in the pursuit of your business, your pleasure, and your profit. You do not let your opinion be heard, and you are, therefore, said to be dead dogs and to have no opinion. This is your own fault. Let your voice be heard; do not forget that you have enemies; do not forget that there are wily Natives, snakelike, who creep in where you cannot walk, because you cannot walk unless you walk upright; that they can poison the ears of your rulers against you, otherwise how can we account for this extraordinary Resolution to pass this measure. (Loud applause.) Louis Cavagnari died by the hand of an assassin, and if he had left a son, and his assassin had a son, the son of the assassin would be preferred for government employ to the son of him who gave his life for his country. (Groans and hisses.) This is to you a great opportunity; a grievous wrong has been sought to be done to you, due, it is true, to no wrong motive, but to ignorance of your nature. Your hearts have been deeply stirred. Join hands, whether you be pure Europeans or whether you be Eurasians, as a common community with a common Christianity. As Christian men let your watchword be "Protection." Have for your motto what is the motto of the volunteers—"Defence, not defiance." You are not asking that anybody's privileges should be taken away, but you are asking for your right. Fight for that, and pray that God may guide you to act wisely; and pray that God may, in his infinite mercy, guide the minds of your rulers in the conduct of this measure to a right conclusion that may avert cruel bloodshed and misery in this unfortunate land.

Mr. BLEECK (the German Consul), in supporting the first Resolution, said that he was not a British-born subject, but he was living under the laws of this country, and anything which was done here would affect him and his fellow-countrymen as much as it would Englishmen. He trusted, therefore, that every foreigner in India would support this Resolution.

The Sheriff then put the Resolution to the vote, and it was carried unanimously and with acclamation.

Mr. PITT-KENNEDY said:—Mr. Chairman, Ladies and Gentlemen,—I confess the duty is one which I should gladly have escaped, for I feel that every word said to-day is likely to have a tendency to irritate and excite feelings of race and class jealousy which I confidently hoped were tending to subside, but I do feel my conscience clear in the matter. It is not we who have provoked the discussion. We have not willingly stepped into the arena. The contest has been forced on us by those who, with a light heart, re-opened questions which most of us believed to have been closed, and who, apparently from mere childish anxiety to do something, are now proposing to amend within two months of its coming into operation, an Act, long—at least three years—under consideration, and as carefully considered as anything can be in a body constituted as is the Legislative Council. Upon them be the responsibility of the injury which must of necessity result from their meddling mischief.

You all know what the proposition is. It is one whose supporters' best argument is that it is so small, so trivial, that really no one need mind it; that "it pleases he, and can't hurt I," as the gigantic navvy said, as his excuse for allowing his wife to beat him, but if that be so, why make the change? Would rational people go through the solemn and ponderous farce of passing a Bill through the Legislative Council if it really were to have no appreciable effect? One would have thought that a measure of such trifling import would hardly have required the sanction of the Secretary of State to

be procured beforehand, as the telegrams inform us it has been, instead of his waiting for the Council to see its necessity, and then passing or vetoing the Act, as that which we may by courtesy call the constitution of India requires. One would have thought that if the measure were so trivial, it might have waited in the recesses of the Legislative Office till some new recasting of the Criminal Procedure Code were deemed necessary; but the brain from which it sprung deems it so important that it is forced forward, apparently without even the decent form of consulting the Judges of the High Court being observed. One would have thought that for so small and insignificant an Act, it would have hardly been deemed worth while, in the present state of Indian finance, to spoil the quantity of paper which, unless the Standing Orders be suspended, the forms of passing a Bill would require, much less to elicit the storm of indignant opposition to which your presence, gentlemen, here to-day testifies. Possibly, gentlemen, the proposers of the change may not have foreseen the probability of the attitude which the European population of India has taken. If the Secretary of State be the delinquent, of course he can know nothing about the matter. If it be the Viceroy, he is perforce placed in "a hollow lotus land," where he and his Council are living "on the hills, like gods together, careless of mankind." His advisers are of necessity members of the bureaucracy—some of them men of great ability and experience of a kind, but all of them severed from anything like an intimate acquaintance with the mind of the non-official population. One may be a very good friend of a Collector, a Judge, a Commissioner, or a Secretary, but there are few of us sufficiently candid to tell them in moments of social relaxation how very erroneous we consider their principles and ideas to be; and if there be, as there probably are, some amongst the immediate advisers of the Viceroy who did know the danger, and had the courage to warn him—we all know the fate of unpalatable advice, when there are others ready to prophecy smooth things.

The Commander-in-Chief, for instance, has had experience of all sorts and conditions of men, but is he consulted on questions of this kind? Is he not, in times of peace, considered as a disturbing element, and a mere Philistine, incapable of comprehending the enlarged views of a Viceroy? for we must remember that according to our present Home Secretary, a Viceroy derives his advantage from his ignorance of India, and his saturation with modern views as held in circles of those who complacently call themselves advanced thinkers, of the men who can concentrate the whole complicated relation of the infinite varieties of mankind in a few formulæ as portable and as certain as Eno's fruit salt or Holloway's pills.

Even, however, admitting all the disadvantages under which a Viceroy labours as the initiator of legislation, it is difficult to understand how any one would have thought that the mere material injury inflicted would be a measure of the opposition excited. Most Englishmen would rather endure death than dishonour.

The proposers of this change must have thought that Englishmen of the present day had rather adopted Falstaff's reasoning on the subject of honour, and that unless they saw some immediate personal loss likely to accrue from the withdrawal of a right, they would not much mind it, and would gracefully turn the other cheek to the smiter. I trust this meeting will undeceive them.

Is, however, this injury so trifling as its admirers suggest? Even admitting that it is improbable that any one of us will be personally brought for judgment before, say, Mr. Gupta in some remote Mofussil Court where reporters and barristers do not grow freely, and that we are careless of the interest of our fellows; even admitting all this, can this proposal be considered without reference to other changes which have occurred latterly—some perhaps, rather administrative than legislative? We cannot forget the distinct tendency of the Government to exclude from Government employment all persons of European descent. The orders with respect to the Department of Public Works and the subordinate services, place at a very great disadvantage, in seeking Government employ, the descendants of those who have won India for England, though born and educated in the country from parents likewise so born and educated; and this in the name of equality. A compatriot of mine was the happy inventor of the formula

for this kind of equality—"one man is as good as another, and a great deal better too."

I do not say that Englishmen have much to complain of in being excluded from the public service here. Those who know the ways of our rulers will hardly call the Secretary of State a generous master. Well for them if they can even persuade themselves that he is just. The universal discontent of the services is the best comment on the action of the Government in this respect; but in the interest of the community, it is hardly well that the less malleable element should be expelled in favour of the more yielding. It may, however, be a great advance in the direction to which we are being driven, which is, so far as I can see, the subjection of the entire community, Hindu, Mussalman, and Christian, to a rule, perhaps less cruel, but as despotic, as arbitrary as ever it was in the days of the Mogul, and infinitely more systematized, more powerful, and less likely to be evaded.

Ever since the destruction of the old Company, more and more the reign of custom and law has been diminished, and the arbitrary will of the Secretary of State substituted, for it is an abuse of language to call the Legislative Council anything save an office for registering the orders of the Secretary of State. We had a beautiful illustration of it last year, when the Secretary of State telegraphed out orders to pass an Act to let in petroleum excluded by an Act of the Legislature. No doubt he says he did not, but equally certainly the statement was made in Council that he did, and the illustration is rather more to the purpose. If he did not, it more strongly shows how mere a phantom the Legislative Council is. A compact nucleus of official members, who, as I understand, believe themselves bound by the Secretary's order, whatever their opinion may be, can always overrule the so-called independent members, while the Viceroy is hardly more than the speaking end of a telephone, transmitting orders from the India Office.

But the subjugation of the Viceroy, incomplete as it was before the telegraph was laid, was not sufficient to make all plain sailing. There was an institution here—the Supreme Court—which was one of the few things in India which was not a sham, and it was doomed. The power of an independent tribunal to take cognizance of the acts of all servants of Government, by which the subject suffered, was hateful to the lovers and possessors of concentrated power, and that most useful jurisdiction was not transferred from the Supreme to the High Courts. Again, by means of the Grand Jury, the public had the right and the power of intervening to put offenders on their trial for criminal offences, even though the Government were unwilling to prosecute, and the Grand Jury was abolished. Then came the new Procedure Code of 1872, by which the power of issuing writs of Habeas Corpus into the Mofussil was taken from the High Court, and a grave invasion of the rights of Europeans was effected, which, however, we were assured was only for the purpose of avoiding the difficulty and expense of sending Europeans long distances for trial, and which was declared to be absolutely final and sufficient for all purposes. Then followed Lord Lytton's attack on the independence of the High Court; next, the reduction of the salaries of High Court Judges; and now comes this new amendment, which, we are also told, will be absolutely final, will do no harm, and merely remove what they are pleased to call an anomaly, but which does take away a privilege and a right of which we are proud, without any prospect of benefit to any mortal man. How can any one believe it is to stop there? Does the suggestion of this change satisfy the craving of the Bengali editor for further degradation of the European? Not a bit of it. No more than the Davitts and Parnells in Ireland are satisfied with the Land Act. Look at the *Amirta Bazar Patrika*, which, either from ignorance, or worse, deliberately suggests to its readers that different punishments are provided for Natives and for Europeans guilty of the same offence. Each concession is only made the occasion for seeking further concessions; and one can have little doubt that, if the present senseless amendment be passed, the next step, and one to be taken at no distant period, will be to subject Europeans universally to the jurisdiction of the Mofussil Courts without reservation. What would be the effect of this? I venture to express my opinion that it would be, before long, to apply to the Mofussil Englishmen the fate suggested by our Premier for the "unspeakable

Turk," and to send him "bag and baggage" to some country where his rights were more respected. Every one knows that a false criminal charge is as well recognized a proceeding in a quarrel in this country as an Evans' gambit in a game of chess, and we know also that Englishmen do occasionally give offence to their neighbours. What would be the result then? One may prophesy that the future will resemble the past, and I think that some of you, gentlemen, will remember two cases, the first which occurs to my mind, in which some of you probably acted as jurors, and in which I prosecuted. One was the accusation of Mr. Vigors. In that case the committing Magistrate was clearly of opinion that Mr. Vigors, a most benevolent and kind-hearted gentleman, had brutally kicked to death an unfortunate villager. There is little doubt that before the Magistrate or in the Sessions, Mr. Vigors would have been convicted, as his alleged accomplices in fact were; but when the story came to be investigated before a High Court, the falsehood of the charge became so manifest that the jury declined to hear the defence. I am not much inclined to believe that my client is in the wrong, gentlemen, but, in that case I could not resist the conclusion of the entire falsity of the case which I had laid before the Court, and the principal witness was prosecuted for perjury and duly convicted.

Another case. There was the charge of murder against Mr. Stevens, who was also, and most properly, acquitted without hearing witnesses for the defence, the case against him being evidently untrue, although the Magistrate who sent him for trial had as evidently the clearest opinion of his guilt. But this Stevens' case points more clearly to the danger of the present proposed change. One portion of the evidence there was a collection of bones alleged to be the remains of the victim. They had been brought to Calcutta by the Native inspector of police, who asserted that he had himself seen them picked up as portions of one body; but I have since been informed, on authority which I cannot doubt, that if the prisoner had been permitted to go into evidence, it would have been proved by the clearest and most distinguished medical testimony that the bones could not have all belonged to one body; that, in fact, the intelligent police officer had picked up bones to manufacture a *pièce de conviction*. You will also, I dare say, remember, gentlemen, with what difficulty the Government was induced to have the conduct of its officers in that case investigated, and how carefully it has ever since concealed the result of that inquiry.

If European Magistrates could do such things, what can one expect from those whose entire sympathies would be adverse?

But, again, to return to this promise of finality, upon what does it rest? How shall it be guaranteed? Is Mr. Ilbert, is Lord Ripon, able to bind future Legislative Councils? Does not all history show that every concession but increases the demand, and that the homely proverb about inches and ell is well founded. It is not true that progress is invariably in one direction. We have seen strong reactions succeed in politics. To go no further back than the present generation, look at Prussia in 1848 and in 1870; but it is as true in politics as in war that the advantage is with the attack, that the defenders of a position, however strong and tenable it may be, have fewer chances than those who try to storm it, and that each point lost by the defence raises the courage, the hopes, and the demands of the assailants. Gentlemen, the course of concession to sentimental claims has been tried elsewhere. We see the present state of Ireland. Do our rulers hope to make India imitate it? This change is to remove an anomaly. This is its sole reason. Will there be no other anomalies left behind? Anomaly is just as good a word as the famous upas tree, and I should think is intended to mean much the same thing, that is to say, something the speaker wishes to vilify, and I take it that the Bengalee editor will before long have discovered some other grievance of the same type, which Lord Ripon and Mr. Ilbert will also find to be an anomaly. Indeed, this is no matter of conjecture now; there has been no reticence about it, and our rulers have been as clearly warned by the Native papers that this must not be final as language could convey the warning. Now, if the proposed change in any way conduced to the safety or prosperity of our Native fellow-subjects, I should pause long before opposing it. If the privilege of the European injured the Native, there might be grounds for removing it, but as it stands it does

them no more harm than it does me that the Marquis of Ripon, if accused of treason or felony, must be tried by a tribunal different from that which would sit in judgment over me if I were similarly unfortunate. I confess that this privilege does not excite feelings of envy in my breast; perhaps my education has made me less susceptible than a Bengalee editor of such feelings; still, it does seem to me strange that, when the Viceroy is so anxious to strip others of a right which they prize, because it is an anomaly, he has never used his power as a constituent portion of the Legislature to divest himself of a privilege which, if he be sincere in his present proposal, he must deem invidious, and which seems at least equally anomalous. Whence, however, comes the zeal for the levelling down now proposed? It would seem to have been an attempt to evade a proposal for levelling up. Among the other changes made in 1872, as I already mentioned, the Legislature, probably having in its mind the recent case of Amir Khan, and as a step in the general process of degrading the High Courts, deprived them of the power of issuing writs of Habeas Corpus beyond the limits of the Presidency towns. In the Act of 1882 a similar provision was contained, giving powers in the nature of a Habeas Corpus to be exercised only within the Presidency towns. Baboo Doorga Churn Law, as an amendment to the present Criminal Procedure Code, proposed that the power should be extended to the whole country. This was levelling up, and I for one, and I believe most of those whom I see about me, would have been glad of any extension of powers tending to preserve the liberty of our Native fellow-subjects, but this idea did not please the higher powers. They did not like to refuse it, but thought they might compromise the matter. They would give nothing to the Native, but would take something from the Englishman. There is a story of an application made by the linen manufacturers of Ireland to the Irish Parliament for an increase of bounty. The Secretary of State replied, "We cannot see our way to spending more money for you, but we will make two or three more offences against 'bleach-greens capital felonies.'" The compromise here is very similar. Baboo Doorga Churn's request was for a tangible benefit to the whole population; it is to be exchanged for an injury to a portion of it. That some greater power of permeating the Mofussil with English ideas would be a great benefit to the population there can be little doubt. To say nothing of the terrible severity of Mofussil punishments, which are, as a rule, double that which would be inflicted in the High Court for similar offences, which again are much heavier than they would be in England, one cannot forget that in all, except Sessions cases, the criminal jurisdiction is vested in an executive officer responsible for the peace of the district, while even in Sessions cases the Judge has gone through a long training as an executive officer, and thus has too often acquired the idea that an acquittal is a misfortune to the public welfare, and they all look for promotion from the Government. Macaulay's fallacious dilemma has been revived, and it is said that either the Courts are too bad for the Native, or they are good enough for the Europeans. Well, many may wish to see much improvement of the Courts for the Natives; but, if no better can be provided for them, how does it make an inferior tribunal good enough for those for whom a better is now secured? If, indeed, the Mofussil system was so bad that common subjection to it would make the whole population, European and Native, unite in an attempt to sweep it away, there might be some justification for the anxiety to deprive Englishmen of their rights. But one can hardly imagine this is the *arrière pensée* instigating the promoters of this Bill. It is a design too Machiavellian to accept as a motive. The proposal has its origin in maudlin sentimentalism and presumptuous ignorance, acted on by gentlemen inflamed with the sense of their own importance, which not unfrequently takes possession of men who have been successful in examinations.

What guarantees have we respecting the Native members of the Civil Service? for any, save their power of memory? The antecedents of an Englishman are known; the family and caste system wholly prevent our acquiring similar knowledge of a Native of this country. There are Native gentlemen whom I am proud to call my friends, members of my own profession, with whom I live in habits of daily intimacy, who know and under-

stand English modes of thought; but how are we to know anything of the Native civilian, or he to know anything about us, even supposing him to be as discreet, as honestly intentioned as a civilian of the old race? Can we expect him to regard with benevolent feelings those whose subjection to his jurisdiction he so earnestly desires? I would think that the mere fact of a person desiring to exercise criminal jurisdiction over another would be evidence almost conclusive that his mind would not be capable of exercising such jurisdiction with anything like impartiality. If it were proposed to the European officers throughout the country that they should be relieved of the necessity of trying Native prisoners, great would be their joy. The desire to take additional labour, and any additional responsibility, is not so congenial to an Oriental mind that we can view, without the gravest suspicion, the motives which lead them to seek for it, and those who propose to yield to that desire, for no better reasons than have been advanced, have only themselves to thank if it be believed that their true motive is their wish to stamp out all liberty, all individuality, whether in the European or the Zemindar, and to reduce the whole population of the country, of whatever class or race, to a helpless herd in the omnipotent hands of a bureaucracy, culminating in the Jupiter of Simla.

The speaker then moved the second Resolution, which was as follows:—

“1st. That memorials of protest be drawn up and circulated for signature in Bengal and other Provinces, and, when duly signed, be presented to His Excellency the Viceroy and Governor General in Council, and to Her Majesty’s Secretary of State for India, and that the Sheriff be requested to sign the same on behalf of this meeting.

“2nd. That petitions for the protection of the rights, privileges, and liberties of Her Majesty’s European British subjects be drawn up and circulated for signature in like manner, and, when duly signed, presented to both Houses of Parliament.”

Mr. PRATT, Master of the Trades Association, seconded this Resolution, and, in doing so, he said that it was impossible for him to add anything to the able remarks which had fallen from the learned gentleman who had just proposed the Resolution. He would, therefore, simply confine himself to expressing, on behalf of the Calcutta Trades Association, their unqualified disapproval, as Englishmen, of the proposed alteration in the Criminal Procedure Code as being unnecessary and injurious to the status of Her Majesty’s European British subjects in India. He begged in these few words to second the Resolution.

Mr. J. G. APCAR, in supporting the Resolution, said that no one who had been in Calcutta since the requisition for the meeting on the part of the Sheriff, and no one there present, could for a moment doubt that this occasion was one of great importance in the history of this country and of the Government of India. The proposition had converted the European community throughout the country, and signs were not wanting that anxiety had been raised throughout the British nation. Though not an European British subject, he now claimed also the privilege that he should join with them all in making his protest against this most unjustifiable Bill. (Hear, hear.) The worst of it was that he belonged to a race which had no status, that none of the privileges of his race had been endangered, and no right of theirs was imperilled. Still, their education and associations were sufficient to enlist their sympathies with the promoters of the meeting. (Applause.) They also had some selfish motives in coming there, as no one who was interested in the maintenance of British rule in India, and in the welfare of the country, could be silent on an occasion like this. Sir Ashley Eden, in replying to one of the numerous memorials which were presented to him by the Native community, gave them these words of advice;—“Seek to obtain only what must be for your own benefit, and do not seek to agitate to share in the privileges of others.” The words of that text the Government here ought to implant in the most impressive colours in every village school in the country. (Applause.) What was the privilege which the Natives complained had been taken away from them? Of what emoluments were they deprived? What was sought to be obtained by the passing of this measure? All that they wanted was to be able to try Europeans. The question had been stated by Mr. Ilbert to be a difficult one, and he stated

that the Natives felt that an invidious distinction had been made. Let them see what the reasons for the Bill were. He came to the conclusion that the whole of the reason was a flimsy pretext. First of all, they said it was an anomaly which they wanted removed. He would ask, who wished it? Was it the Government or the Bengalee? If the Government, then he said that there were other anomalies which required removal. But time pressed, and he did not wish to dilate on the subject at any length. But there were further points in respect of this question of "anomaly" to which he wished to draw attention. Mr. Branson had alluded to the distinction which was made in the treatment of Native Chiefs, and the consideration shown to ladies of the zenana; and with reference to these Mr. Apcar submitted that in many cases there were difficulties in administration, and even failure of justice. A Judge who did not see a witness, who could not hear the evidence, was not able to form a correct conclusion upon it as when a witness was present in Court. He also submitted that on the subject of anomalies, by their administrative acts, the Government had proved that they approved of anomalies. Why, they had even gone to the extent of lowering the salaries of Native Judges, and there were other and more serious anomalies. What greater anomaly could there be than that in which the conqueror's voice was not heard, and the only voice heard was that of the conquered? If they took the matter on a higher basis, he thought that, as conquerors, they were entitled to some privileges and rights over those whom they ruled. Then there was a talk of invidious distinctions. Why, he was labouring under every disability which the Native did, and he was under the disadvantage of not being a Native himself. Was the Government prepared to show that they were willing to give up India? for the retention of it was an anomaly. For that was all that it came to. Their very presence in India was invidious. This was a subject on which he could speak plainly, because he was in the same position of being ruled as a Native, and under the same disabilities. But he said that there was something which was due to the conquerors of the land—men who had brought it to its present state of prosperity. He could not understand this cry of the Native to be allowed to try a criminal who was unwilling to be tried by a Native. Speaking for himself, he should have been very glad, when a criminal came before him and wanted to be tried elsewhere, to let him go before another tribunal. Now, it was said that there would be some benefit gained by the trial of Europeans by Natives; but speaking, not from mere generalities, but from personal knowledge, of what was said by Natives themselves, the benefit would be the other way. Then there was a talk about equality. Was it possible to make equality by statute? He certainly did not think so. Then, again, would the Government gain the confidence of the people by passing this measure? He had been assured by more than one of his Native friends that they regretted as much at any one could regret that this question had ever been raised.

If they sought to make everything equal, let there be no distinction—let no Natives get subordinate appointments in preference to every one else. Let all have a chance. But they wanted everything for themselves, and they did not wish others to get a single privilege in return. The Government had been generous enough to allow them laws which had been in force for a long time, and in regard to the Civil Procedure Code, which was passed in 1877, did the Europeans ever raise their voices against the privileges which were guaranteed to them in that enactment, such as their females not being brought into Court, and other advantages? Until the Natives were willing to give up their privileges they had no right to come and ask the Englishman to give up his rights. These were rights in more senses than one. Mr. Branson had given reasons why these rights could not be taken away here by any legislation. In 1872 it was declared solemnly that certain rights were theirs, and they had got to show reasons why they were not to be continued, and what had happened that it was necessary to bring forward this change. The Criminal Procedure Bill came forward in 1882, and Mr. Gupta had already raised the question, and not a single thing was then done. Sir Ashley Eden did not then bring it forward. He went away, and left it with the Government. Mr. Apcar ventured to predict that of the many acts of that Governor none was wiser than that act of his. Would that Mr. Ilbert had acted in the same way. (Hear, hear.) Would that he had left the consideration of it

until he had left office. Sir Ashley Eden acted in this way because he knew perfectly well the feelings of his countrymen.

He knew what a storm it would raise. It was like a charge of dynamite, which it was left to the present Viceroy to explode. Then, again, who were consulted in this matter, and what was the letter sent out regarding the opinions of certain high officials? He would again refer to a speech of Sir Ashley Eden's at his farewell dinner, that 20 years ago the officials and non-officials were at arm's length, and that it was not so now. Then again, was the non-official community consulted? Mr. Apcar did not think that there was any deliberate intention to perpetrate a wrong, but there was an unfortunate misunderstanding of what was best for the country. He believed his learned friend, Mr. Ilbert, was misled entirely as to what the feeling in the country against the Bill was, and finding this feeling exist, the Viceroy should withdraw the measure. Whatever was the case in India, there was no doubt of the influence the European community had in England. The House of Parliament would hear their voice. Whatever the feelings might be of the members of the Government of India here, their beloved Queen would not allow her people to be trampled down in this way. It was, however, getting late; but, in conclusion, he wished to say that he and the members of the Armenian community fully and heartily sympathized with those present at this meeting, which gauged the depth and sincerity of their feelings in this matter. That community believed, in the sincerity of their belief, that the proposed measure would really operate as an injustice to them, and that the interests of the European community in the Mofussil would be imperilled. They also apprehended that this measure, if enacted, would deter the employment of British capital here, and would hamper British enterprise, which would, perhaps, be seriously interfered with. For all those considerations the Armenian community offered them their aid in this measure, and they would fight with them in opposing this measure. (Applause.)*

The Resolution was then put, and carried with universal acclamation.

Mr. MURDOCH (of Messrs. Moran & Co.) moved the third resolution, which was as follows:—

That a Committee be formed, consisting of the following gentlemen:—

Messrs. Keswick, Flemington, W. L. Thomas, A. B. Miller, G. H. P. Evans, J. G. Apcar, J. E. A. Branson, Ezra, Gubboy, Finter, Madge, Murdoch, Cruickshank, with power to add to their number, for the purpose of preparing the memorials and petitions in terms of the last Resolution.

He said it was not because he did not feel strongly on this subject, but after the able and eloquent speeches which had been delivered, and which had been so patiently listened to, his feeble words would have little or no weight with the meeting, and that was the reason why he contented himself with proposing this resolution.

Mr. CRUICKSHANK (of Messrs. Begg, Dunlop, & Co.) seconded the Resolution.

The Rev. Mr. FINTER, President of the Eurasian and Anglo-Indian Association, in seconding this Resolution, said that if he had been asked to speak here as a parson, he could have delivered a very long sermon about the stirrers up of strife; but it would not have been for you, for he thought it was evident that they were here for the prevention of strife between two good races,—races which had both of them their good points. The strife which would be stirred up would be felt in every tea garden, give rise to wrong and unjust and foolish ideas in every village school, and might perpetuate for years strife which would do incalculable harm, and I say, as a Christian parson, evil be to him that stirreth up strife. It is not on our heads. It is only our rights that we ask for; it is nothing extraneous. It is what our forefathers fought for for us before they dreamed of India, and wherever Englishmen went abroad, surely it was understood that he carried his rights as a citizen with him. (Cheers.) If he went to Turkey, he found himself there in the arms of his Queen. (Loud cheers.) A Turkish magistrate would not be allowed to touch him. In Egypt, in China, he was safe; in the far South, it might be hundreds of miles away, he was safe, and his safety was

* This speech is most imperfectly reported; but it was impossible at the late hour at which it was in type to rectify it.

ensured by the presence of Her Majesty's men-of-war. It was only here that Englishmen gave up a portion of their privileges, that the rulers sought to deprive them of their rights. That is why they gave up some of their privileges in 1872, and now, out of that compromise, the Government wanted to make us surrender everything, and you answer "No." All those who were really affected by the measures of the Government in a political and social manner were now regretting their acquiescence in the compromise of 1872. And who were crying against these privileges? Why, the Natives, who were full of privileges themselves. The first step of the East India Company was to secure to the Natives not only justice, but the respect of their most absurd privileges. They gave them not only every facility for the practice of their religion, but their caste customs as well. They recognized the privileges of the Bengalee above the privileges of the son of the Queen. He could be forced into a court of law, but the Government would not take away from the conquered race a single privilege which they claimed by prescription. Were Englishmen to be below the daughter of a *Khan-samahjee*? (Cheers.) Were they to be forced to break the traditions of centuries at the will of men who knew neither them nor the Natives? (Prolonged cheers.) It was not they or he that would suffer if they allowed this law to be carried out. And what was now confined to a Magistrate of the First Class must inevitably go to the Second and Third. And every Native Magistrate would be entrusted with the right to try any of Her Majesty's subjects, although he was a Britisher. The real point was this, that the English people deserved it all. He said it seriously. The European in India, by his utter selfishness about his Brethren, deserved it all—not selfish in social matters, as their alms for charities, for hospitals, for Christian instruction, for foundations for Englishmen and Eurasians show that. But they are selfish politically; they have left their traditions behind them. There was no Calcutta. There were here and there a few commercial institutions—a Chamber of Commerce here, a Trades Association there. But where was Calcutta? (Cheers.) He knew that India had never heard its voice except here. So let them take a lesson home. This was only the outcome of a long series of vagaries of a philo-politico radicalism. They tried it in Ireland; they tried it in Egypt; they tried it with the Zulus (laughter); they tried it with the Boers; and why should they not see whether the British race could not be ruled in that way? The English were not Frenchmen or Spaniards, who could fuse and amalgamate and lose their individuality. They must be British, and cannot alter. After a public meeting comes organization. So Mr. Finter would only accentuate what went before. Organize a permanent, strong and good, financially sound body, who would be able to tell the Government, whether the Government want it or not, what the feelings of the Europeans are. Let us recollect that we are all one, from the lowest Eurasian to the pure Englishman, that it cannot but be so while we are here; and when we welcome here the representative of that Fatherland, Germany, in this room, when we see represented the most ancient Christian State, Armenia, we may rest assured that, if we only stick together, we shall be heard even as far off as Westminster.

The Resolution was unanimously carried.

On the motion of Mr. Cruickshank, a hearty vote of thanks was then passed to the chair, and on a call from the chair three hearty vigorous British cheers were given for Her Majesty the Queen, and, led by Mr. Branson, the National Anthem was sung with the greatest enthusiasm.

The vast assembly then dispersed at 6.45 p.m.

APPENDIX.

[*Reprinted from the Calcutta "Englishman" and Supplements of 1st, 2nd, and 3rd March 1883.*]

PUBLIC MEETING AT THE TOWN HALL.

THE following is a corrected version of the Reverend Mr. Finter's speech at the above meeting :—

The Reverend Mr. Finter, President of the Eurasian and Anglo-Indian Association, in seconding this Resolution, said that if he had been asked to speak here as a parson, he could have delivered a very long sermon about the stirrers up of strife ; but it would not have been for them, for he thought it was evident that they were here for the prevention of strife between two good races,—races which had both of them their good points. (Cheers.) The strife which would be stirred up would be felt in every tea garden, give rise to wrong, and unjust, and foolish ideas in every village school, and might perpetuate for years strife which would do incalculable harm. (Loud cheers.) And he would say, as a Christian parson, evil be to him that stirreth up strife. It is not on our heads. It is only our rights that we ask for ; it is nothing extraneous. It is what our forefathers fought for for us before they dreamed of India, and wherever the Englishman went abroad surely it was understood that he carried his rights as a citizen with him. (Cheers.) If he went to Turkey, he found himself there in the arms of his Queen. (Loud cheers.) A Turkish Magistrate would not be allowed to touch him. In Egypt, in China, he was safe. In the far south, it might be hundreds of miles away, he was safe, and his safety was insured by the presence of Her Majesty's men-of-war. It was only here that Englishmen gave up a portion of their privileges, that the rulers sought to deprive them of their rights. They gave up some of their privileges in 1872, and now, because of that concession, the Government wanted to make us surrender everything, and you answer "No." (Loud applause.) All those who were really affected by the measures of the Government in a political and social manner were now regretting their acquiescence in the compromise of 1872. And who were crying out against these privileges ? Why, some of the Natives, who were full of privileges themselves. The first step of the East India Company was to secure to the Natives not only justice but respect for even their most absurd privileges. They gave them not only every facility for the practice of their religion, but recognized their caste customs as well. They recognized the privileges of the Bengali above the privileges of the son of the Queen. The latter could be forced into a Court of law, but the Government would not take away from the conquered race in India a single privilege which they claimed by prescription. Were Englishmen to be below the daughter of a *Khunsamahjee* ? (Groans.) Were they to be forced to break the traditions of centuries at the will of men who knew neither them nor the Natives ? (Prolonged cheers.) It was not they or he that would suffer if they allowed this law to be carried out. In Calcutta they could have nearly every security for the proper administration of justice. But it was the scattered Englishmen and Eurasians of the Mofussil that would suffer, and it was their duty in Calcutta to stand up for the weak and helpless of their race. (Cheers.) And they must recollect that this was but the thin end of the wedge. What was proposed to be given to only First Class Magistrates now, must, in the end, on the same principle, be given to Second Class, and ultimately even to those below, so that any one having the office of a Judge might have power over the liberty and the property of the Briton at home. But the saddest point of all was that the Europeans in India really deserved this treatment, through their apathy as a class. (Hear, hear.) They were not selfish in social nor in religious matters ; their alms for charities, for hospitals, for churches, and chapels, and schools, proved that, and in this both English and Eurasians had shown the race they came from. But they were selfish as a political community ; none looked enough to the general interests of the body ; they left their traditions as citizens behind them. There was no Calcutta. There

were here and there institutions; here a Chamber of Commerce, there a Trades' Association. But where was Calcutta? (Hear, hear.) He knew that neither the Government nor India ever heard its voice, and how could they tell what Europeans wanted? So let them take the lesson home, and be better prepared in the future. This proposed legislation was the only outcome of a long series of vagaries of philosophical radicalism. They had been tried with the Irish, with Egypt, with the Zulus, and with what result? (Laughter.) When would they learn that the British race could not rule on those principles? They were not like the French and the Spaniards, who could amalgamate with subject races and lose their individual and social characteristics.

Mr. Finter then impressed upon the audience the fact that a public meeting was only the first step, and after the grand demonstration in that hall came the work of organization. Let them organize a permanent, strong, and financially sound body which will be able to tell the Government, whether the Government want it or not, what the feelings of the European community are on any measure that may come before them. Let them recollect that on this and all similar questions they were all one, from the lowest Eurasian to the highest of Englishmen. (Hear, hear.) And it cannot but be so as long as we are here. He was very glad to see the representative of our Fatherland, the German Consul General, and the representative of that most ancient of Christian kingdoms, Armenia, giving their aid and sympathy, and felt assured that, if they only all stuck together, the voice of such a meeting as that would be heard by their fellow-countrymen even as far as Westminster. (Prolonged cheering.)

THE PUBLIC MEETING AT THE TOWN HALL.

THE following is a corrected version of Mr. J. G. Apar's speech at the above meeting:—

Mr. Chairman, Ladies and Gentlemen,—No one who has been a day in Calcutta since the requisition to the Sheriff first began to be circulated, no one who is here present to-day, will for a moment doubt that this occasion is one of grave importance in the history of this country under the Government of India. The proposal of the Bill before the Council to amend the Criminal Procedure Code has convulsed the European community throughout the whole of India, and signs are already apparent that the anxiety it has caused is spreading throughout the whole of the British nation. The support of Europeans who are not British subjects has been offered to you. I am a British subject, but not an European, nor am I a native of this country. The status of the class to which I belong is not threatened, nor is any right or privilege of ours imperilled, but we feel sufficiently strongly in the matter to be very willing to join you in this solemn protest against the Bill. We think that it is most unfair and unjust towards you that the measure be pressed on you against your will. Our education and association enlist us in sympathy with you, but we also are moved by selfish reasons. We are interested in the welfare of the country and of the British rule in India, and no one so interested should be silent on an occasion like this. I have been led to examine the grounds which are urged for the proposed change, and I have found them to be only flimsy pretexts. Sir Ashley Eden, in his reply to a memorial presented to him by a section of the Native community, earnestly advised them to seek to obtain only what would be for their own benefit, and never agitate only to share in the privileges enjoyed by others. Sir Ashley Eden was intimately acquainted with the disposition and characters of the Natives; he was their friend, I may say almost their partisan. Those who knew him best will best appreciate that he would not have spoken this if he had not thought it to be necessary and for their benefit to give them this warning. The words Sir Ashley Eden used should be emblazoned as a text in the most impressive colours, and placed in every village school throughout the whole of India. What is the benefit which the small clique of Bengali gentlemen who are the agitators in the matter desire to obtain by the passing of the measure? Of what office have they been deprived, what emolument have they lost which they desire to regain, and for which the amendment is to provide them a remedy? No doubt they will reply that

they feel the distinction so acutely that they are willing to undertake extra work. Gentlemen, courts of law would look with suspicion on the conduct of a person who shows an eager desire to thrust himself into the position of gratuitous arbitrator to which is attached heavy work and onerous responsibilities, and would closely scrutinize the reasons for action of such an extraordinary character. We should consider that the education of the child who could obtain everything by simply crying out for it very loudly was being sadly neglected. We do not allow the turbulent members of a nursery to become masters of the house simply because they utter ear-piercing shrieks. The answer to the questions I have put sounds plausible enough, but let us see what are the reasons urged on their behalf.

* "Errors like straws on the surface flow,
* * * He who would search for pearls must dive below."

It is urged that there is an anomaly, and it is desired to remove anomalies. I would ask, who urges this? Is it the Government or is it the Bengali? If it be Government who thus speaks, I would say,—Why do you *enact* anomalies? Why pass the Arms Act? Why make the dealing with immoveable property in a certain way in Calcutta a mortgage, and enact that the dealing in the same manner with property out of Calcutta is not a mortgage? This has been done by the said Transfer Act passed under the auspices of Lord Ripon only last year. How is it, if you abhor anomalies, that you have reduced the salary of a Native Judge of the High Court? You say that the pay now offered is quite sufficient for him because he is a Native; then do you not yourselves acknowledge, and in spite of every protest of Europeans and Natives alike, who implore you to refrain because you are lowering the prestige of the High Court and injuring the administration of justice? Do you not insist that there is a distinction between a Native and European, and that they should not be dealt with on the same footing? And if you say that it is only the Native who is a member of the Civil Service who is to be allowed to try European British subjects, Mr. Justice Romesh Chunder Mitter, a Judge of the High Court, a man of great learning and the most distinguished character in the Hindu community, who tries cases against Europeans in appeal from the Mofussil, would not be qualified under your proposed law, should he settle in the Mofussil, to try European British subjects there. If it is the Bengali who speaks of anomalies, I would say to him, you yourselves enjoy the advantage of many anomalies, and until you consent that your wives and daughters shall be examined in open court it does not lie in your mouth to raise a cry that any change in any matter should be made on the ground that there is an existing anomaly. If the Princess of Wales were to come out to India, Her Royal Highness would be liable to appear as a witness in open court, and the wife of the humblest clerk is privileged and protected from so appearing! Mr. Branson has pointed out administrative difficulties under the law that exempts persons from appearing in the law courts as witnesses. Permit me to point out that the difficulties caused are not only administrative difficulties, but difficulties which lead not unfrequently to a failure of justice. A Judge who does not see a witness, who is not permitted to hear his evidence as spoken, cannot come to a conclusion as to the weight to be attached to his testimony, as when he can observe his demeanour and the manner in which the questions are put and answers given. These witnesses are examined under a commission, and there is not only the chance of a failure of justice which might well be avoided, but also the inconvenience caused to the litigants is great, and a heavy addition to the costs of a suit. Englishmen, however, are generous enough to abstain from raising an agitation and permit Natives to enjoy these privileges which, after all, are nothing other than prejudices. But what greater anomaly could there be than the state of circumstances in which the voice of the conqueror is not heard, and the voice of the conquered treated with extravagant respect? If we treat the matter in a broader and, as I think, truer, basis, I think that Englishmen, as the conquerors, are entitled to privileges, and that it would be an anomaly if they were not permitted any. Then it is said that the distinction is invidious. On this point I can speak plainly. I suffer every disadvantage under which the Native labours, with the additional disadvantage of not being a Native myself—a disadvantage felt by every one in this country who is not a Native, and not

one of the high officers of State. I confess I cannot appreciate the craving for power to try persons who do not wish to be tried by them. If I were a Magistrate, and an accused person objected to my trying him, if it were possible, without administrative inconvenience, to transfer his case to the file of another officer, I should be glad to be rid of him. It is essentially necessary that the decision of tribunals should be respected, and decisions of a Judge who is objected to for any reason can never be respected.

The proposed alteration in the Procedure Code may operate to permit Armenians to try European British subjects, but we would not desire the power to try them if they are unwilling to subject themselves to our jurisdiction. We would concede that there is something due to Englishmen, who are the conquerors here, and have brought this country to a state of prosperity and protect us. But we could wish, nay, we are anxious, that there should not be a change, because the injury to us should be far greater if there was a change than if the law as it stands were maintained. We prefer not to be tried by Natives, and would rather be tried by Europeans. Those who, like ourselves, have been brought up and live under the influences of Western civilization cannot be understood rightly by Natives, and if they are unable to understand our characteristics, they cannot try us with justice to ourselves any more than they can try Englishmen. While the distinction is maintained, we have a good ground to apply for the transfer of a case from the Court of a Native Magistrate, but if the principle embodied in the Bill become law, the ground is cut away from under our feet, and our chance—which we prize highly—of escaping the Court of a Native Magistrate is destroyed. Besides, there is an increasing number of children of fathers who are Armenians, who come under the definition of European British subject. When the Native talks about the distinction as invidious, I cannot help remarking that they are most unwise in attempting to thrust themselves into a position to try Englishmen. The cases in which they are accused are, by every circumstance connected with them, made very noticeable. English Magistrates make mistakes in cases against their countrymen, and when a mistake has been made, or supposed to have been made, extremely strong feeling is generated. I myself remember such a case tried in the Mofussil about seven years ago, and if it happened that a Native Magistrate were to make, or be supposed to have made, a mistake in such cases, I fear the feeling that would be excited would place the Native Magistrate in an extremely unhappy position. It would be such a position that I myself would describe as being an invidious one. I fear that the decision would not be attributed to a mistake. I believe, whenever such an occasion happened, on each of such occasions there would be displayed a feeling of the same character as we are now witnessing, though, perhaps, not so widely spread as is the present excitement. Does Government thoroughly appreciate this? But why discuss the matter on the bare ground of removing so-called invidious distinctions? Until the English nation are willing, or say plainly that they are willing, and intend to withdraw from this country, the cry of invidious distinction must be disregarded. That they have no such idea, the anxious watching of Russia, the popular enthusiasm excited by the Egyptian expedition, is a complete answer. I am aware that there exists in England a small knot of persons who would abandon every possession that the valour of their forefathers have gained, and the courage and devotion which their fellow-countrymen have maintained; who, acting under the code of a new morality, are friends of every country but their own. But these persons are not worthy our consideration. It has been advanced as an argument that if Native officers are permitted to try civil cases in which Europeans are parties, why should not the principle be extended to criminal cases? This bare fact proves nothing. We should first ascertain whether the decisions of Native Civil Judges give satisfaction before any such argument can have any weight. I hear from Englishmen that there will be bias against them. I hear from Native gentlemen, the friendship of many of whom I consider it a pleasure that I enjoy, that in criminal cases there will be bias in their favour. I do not stop to inquire which is the true state of things. The fact that neither side considers that the Native Magistrate in a criminal case will be impartial is enough for me. How can you give jurisdiction to

Judges admittedly not impartial? Then there is a talk about equality. Can you make people equal by statute? What is it that Native gentlemen want? Of what real benefit will it be to them if it were solemnly enacted that they were equal with Englishmen? Would they thereby gain the respect or confidence of the English people by such an Act? I can understand that its ties can be dissolved by an Act of the Legislature, but I do not believe that such ties can be made by them. But if the Natives are so anxious for equality, let there be equality in all things. Let the Subordinate Executive and all appointments be open equally to Armenians, Eurasians, and Europeans, as well as to Natives, depending only on the qualification of each candidate for each post. Would the Native tolerate this? Are you in doubt as to the answer? It has been a most unfortunate circumstance that the measure has been brought forward. Native gentlemen, friends of mine, have expressed their regret that the Bill has been proposed, because of the feeling which it has caused. But of course, now that it has been brought before the Council, they are bound to say that the measure should be passed. Europeans and Natives were commencing to mingle in society together, they had begun to visit at each other's houses, then this Bill was introduced, and strong antagonism excited and bitter feeling engendered. Let us hope that the Bill will be withdrawn, and that it will be withdrawn soon. If it is soon withdrawn, the feeling excited may gradually die away, and although there has been harm done, it may not prove to be of a serious character. But if Government persist in their intention to keep the Bill before the Council, I fear that the feeling of resentment which is daily growing stronger on both sides will throw us back more than a quarter of a century. And how comes it that this serious state of affairs exists? What reason is there for proposing such a measure, and in the manner and under the circumstances it has been proposed? In 1872 the Legislature solemnly enacted that there should be a distinction, and gave to European British subjects certain rights, and then again confirmed them in 1882. What has happened since then that these rights should be taken away from them? If Sir Ashley Eden in truth is in favour of it, and recommends that the measure is a pressing one, how was it that he did not mention the subject at the passing in 1882 of the Code now in force? He was then Lieutenant Governor of Bengal, and took an active part in the passing of that measure. It is difficult for me to believe that Sir Ashley Eden, who was most intimately acquainted with the feelings entertained on all subjects by the various communities who lived under his rule here in Bengal—it is difficult to believe that he did not foresee the storm the proposal of such a change would raise. I believe that he fully appreciated the difficulties, and that that was the reason why he postponed consideration of the question during his tenure of office. Of the many acts of Sir Ashley Eden, which history will record with approval, I venture to predict for posterity that not one will be considered as showing greater wisdom and judgment than his refusal to entertain the question as one to be practically dealt with while he was holding the reins of Government. Would that Mr. Ilbert had shown the same wisdom! Would that he had refused to entertain the question during his tenure of office and left the consideration of it to a successor! It is true that Sir Ashley Eden, so far back as 1859, had formed his opinion in favour of Natives, but however tenacious he may have been of opinion when once formed, I have not heard that he has since expressed himself openly as still adhering to the cause he then advocated. In January 1872 the Governor General in Council—Lord Mayo was then Viceroy—passed a resolution in connection with the Criminal Procedure Code Bill then before the Legislature, that British European subjects should not be subjected to the jurisdiction of persons other than their own countrymen. The lamented death of that noble man occurred in the course of the next month, and the reins of Government were entrusted to Lord Napier of Murchistoun, then Governor of Madras, during the interregnum. In April of the same year the Code became law, but before it was finally passed Mr. Ellis, now Sir Barrow Ellis, in direct opposition to the resolution, passed only about two months previous, proposed to extend the jurisdiction of Native Magistrates over British European subjects, in principle the same as the amendment now before the Council. The amendment was

solemnly rejected, and Englishmen had given to them the additional security of a provision in the Code. The supporters of Sir Barrow Ellis were, the public may be surprised to hear, Lord Napier of Murchistoun, Lord Napier of Magdala, Sir George Campbell, and Sir Richard Temple. In this connection Cicero's reference to the Oracles recurs to one, I wonder whether the quotation of his words would here be an apt quotation? The House of Lords, we learn, were solemnly informed "that many eminent authorities in connection with the present Government" were in favour of the proposed measure. Then later the Secretary of State admits that the eminent authorities "are Lord Napier of Murchistoun, Lord Napier of Magdala, Sir George Campbell, Sir Richard Temple, and Sir Barrow Ellis." The minority were out-voted. I will not dwell longer on this point, but I wish to say a word as to the qualification of the authorities to judge of the subject—a subject which requires a very intimate knowledge of the class which the proposed measure will prejudicially affect. If that class concurred, as they generally have done, to permit the Natives to enjoy their customs and privileges, there of course could be no difficulty in passing the proposed measure. The difficulty arises only when they are unwilling to cede their rights. What knowledge had the eminent officials? I prefer to describe them as officials rather than as authorities in those days. I remember Sir Ashley Eden speaking last year in this very Hall at the farewell dinner given in his honour, which many of us will recall to mind—I remember his words. He said that there existed 20 years ago "a very marked separation between officials and non-officials." How could officials in those days gauge the feeling of non-officials? What sympathy could there have been between them? If there was the feeling existing in the breast of the green young civilian lately come out from his home, where there must have been, as there is now, sympathy and fellowship between Englishmen and gentlemen, and where terms, official and non-official, are still unknown, what must have been the position of the higher officials, and what was to have been the attitude they assumed towards the non-officials? And Sir George Campbell, Sir Richard Temple, and Sir Barrow Ellis were very high officials in their respective provinces at a period more than 20 years ago. If they knew little of the feelings of their fellow-countrymen in India in 1872, what can their knowledge be now after they have quitted India? It cannot be supposed that either Lord Napier of Murchistoun or Lord Napier of Magdala ever had any knowledge of what was the feeling; they formed their opinions on what was represented to them, and we have never been favoured with any arguments in support of their opinion of the same character as the masterly treatment of the subject by Sir FitzJames Stephen. The present Viceroy and Mr. Ilbert are in the same position as the then Viceroy and the then Legal Member, and we are demonstrating here to-day, and the European community, scattered as they are throughout this vast continent, are demonstrating to the officials on whose statements we are told this measure is proposed, that Englishmen are not willing, nay, will desperately resist, every attempt to take away a right which they cherish as most dear to them. I doubt whether the high officials whose statements have been called for are generally competent to form an opinion as to the feelings of non-officials. They are civilians of more than 20 years' standing, and their present positions do not permit, as a rule, of a free interchange of thought with non-officials. But whatever their individual opinion may be, I say that the circular which required them to send in their opinions was not calculated to elicit free and candid opinion of the measure. If it was desired that they should frankly state what their views were, then I say that the requisition to them was most improperly worded; if it was intended to intimate what was the settled policy of Government, then I say do not refer to them, as the opinion of any class at all, for the statements which have been elicited are not worth a cent. The officers who have contributed their portion of the material on which this Bill is said to be founded, must have been congratulating themselves that they have not disobeyed the implied, but not on that account any less real, order given to them, when there appeared the scolding that was administered to the Governor of Bombay, which attracted so much notice. And Mr. Howell may think himself most fortunate that the return to the circular order was designed to be for

private circulation only. And why was not Mr. Rivers Thompson consulted? Could it have been the intention, when it is stated there was a desire to consult Local Governments, to exclude the Governor of so important a province as is Bengal from the list of those whose opinion on the measure was sought? It is true that Sir Ashley Eden was in India on the date of the circular, but he left within a month after that date. Sir Ashley Eden is made to appear as desiring that the measure should be passed as law forthwith, but where is it that it appears that he considered that it should be taken into consideration forthwith? Whatever may have been his opinion on the abstract question, whether the Natives should or should not have the jurisdiction conferred on him, I appeal to his conduct as corroborating me when I say that he did not consider it to be a wise act to attempt it at the present moment. Otherwise his entire conduct is wholly inexplicable. He is stated to have held opinion favourable to the change. He had before the passing of the Criminal Procedure Code in 1882, Mr. Gupta's letter in his hands. He was present at the passing of that Act, and he does not venture to say a word in its favour till just before he left the country, and then leaves a letter in the hands of Lord Ripon charged with dynamite. One not unnaturally begins to wonder whether he was a friend of the present Government! But, gentlemen, I do not think that the measure will be proceeded with now that the proposal of it has evoked a strong feeling against it. I refuse to entertain a doubt even that there has been a deliberate intention to perpetrate a wrong. The Bill has been brought in because the Governor General in Council has been permitted to have only an imperfect understanding of what is best for the country and for the European community. The Viceroy has the strength of a giant, but we may be assured that he will not act tyrannically towards his own countrymen. Every public utterance of his breathes a generous courtesy. As a statesman and an Englishman he will pay consideration to what you represent and to your feelings in the matter. He will recognize that in pressing forward to what he may fully be persuaded is a great principle it is impolitic—I quote expressions made use of by Lord Stowell—to break through every other great principle that stands in the way of its establishment. He will be persuaded that he will be discharging his duty if he provided for the existing occasion, and leave for future wisdom to provide for future times. He will not attempt to prevent a suspected injustice towards the Natives by committing an actual injustice towards his own countrymen. I believe when once His Excellency appreciates your true feelings in the matter, he will admit his mistake, and the Bill will be withdrawn. It is human to err, and a display of strength and manliness of character to admit an error when it is seen that there has been an error committed. Let us hope that His Excellency may recognize that he has made a mistake. If he does perceive this, we may be assured that he will admit it, for is he not an English gentleman? But, gentlemen, if His Excellency does not see the error of his ways, all is not lost; you have an appeal to Parliament and to Her Gracious Majesty. It is painful to contemplate a state of circumstances which makes it possible to doubt whether this meeting will be regarded as an influential one! There are here present not merely the representatives of the European community, but the whole of the European community of Calcutta and in the district within many miles of Calcutta. I see besides a large body of the community to which I belong—Greeks, Germans, and Frenchmen. I distinguish also in this dense crowd Oriental Jews who have all come to lend you their support and to countenance this meeting. There can be no doubt that your countrymen in England will listen to you. And our beloved Queen, who has throughout her glorious reign shown anxious solicitude for the greatness of her country, will not allow the cry of her people who support her throne to be disregarded. In whatever you do, the Armenian community, to which I have the honour to belong, claims the privilege of joining you. Even if no selfish motive existed, we would be eager to support you in acknowledgment of the deep debt of gratitude which we owe to the great English nation. We gauge the strength and depth of the feeling that has been excited. We are convinced that you are sincere in your belief that, if the measure be passed, there will be a feeling of insecurity spread throughout the European community in the

district. We appreciate that such a feeling will deter the investment of British capital and hamper the employment of British labour, and in the result seriously prejudice British trade in India and affect the future welfare of the country.

THE MEETING AT THE TOWN HALL.

To the Editor.

SIR,

I TRUST you will afford me space to protest against the language and general tone of some of the speeches delivered yesterday in the Town Hall. The meeting was convened to give Europeans an opportunity to publicly condemn the action of Government with regard to the Criminal Procedure Code, and to maintain that Englishmen have rights which they most highly value and which they do not mean to surrender without endeavouring by every means in their power to retain them. It is a mistake to suppose that Englishmen in India are a favoured class. They have their rights, it is true, but as Mr. Branson pointed out, have not Natives their privileges?

Had the speakers at yesterday's meeting contented themselves with urging their hearers to stand up for their rights; had they contented themselves with condemning Government, in the first place, for bringing forward such an amendment, and in the second place, for trying to hurry it through Council with such indecent haste; had they gone further, and condemned the system by which a Secretary of State first gives his consent, and the Indian Government registers his decrees, they would have deserved well of their country. But when, instead of confining themselves to this dignified course, they utter language, and express sentiments calculated to arouse the very worst feelings, and to revive those race antipathies which, but for this unfortunate blunder on the part of Government, and their intemperate language, was fast subsiding, they lay themselves open to the condemnation of all right thinking Englishmen. The language they have used, and the sentiments they have expressed, should be withdrawn.

As a specimen of Mr. Branson's eloquence, take the following:—

"You are not so blind to reason; at all events you are not so blind to the teachings of history, you are not so ignorant of the nature of that people as to suppose that they don't hate us, as those who have filched from their hands the rich prize which they thought to have enjoyed themselves."

Do Natives hate us? I most emphatically answer it is false to say they do, and it will never be true till Englishmen in India learn to think and speak like Mr. Branson.

There are other passages in Mr. Branson's speech that certainly would not have been expected from a gentleman in Mr. Branson's position. Mr. Branson has yet to learn that abusive language is not argument. I can only hope that Natives and Europeans will take Mr. Branson's speech for what it is worth, and give him the benefit of the doubt in believing that he would not have used the language he has done had he not, yesterday afternoon, carried away by his own eloquence, lost command of his better judgment, and said many things he now wishes he had left unspoken.

9, Clive Street, Calcutta,
1st March 1883.

JOHN CROFT.

MR. BRANSON'S Speech at the Town Hall Meeting.

To the Editor of the "Englishman."

SIR,

PERMIT me to say a word in your columns on the subject of Mr. J. Croft's letter published in this day's "Daily News" and "Statesman."

Entirely appreciating the calm and moderate tone of his criticism upon my speech of Wednesday last, I cannot but admit that I spoke under very great excitement.

My own extreme repugnance to the measure, so strongly shared by the vast meeting I addressed, as manifested by their enthusiasm, not unnaturally acted very strongly upon me, a speaker almost entirely unused to a responsive audience.

This must be my excuse for having been led to use language towards my Native fellow-subjects which I feel to be unjustifiable and personally offensive, and which I should never have used except under the influence of very violent excitement. I am aware that the great mass of the Natives have not demanded this measure, and do not desire it, and there are many among them for whom I have very great esteem. Such language forms no part of the ground on which I rest. I regret and sincerely apologise for the use of it, as well to those to whom it was applied as to the audience to whom it was addressed.

That I should have been led by my excitement to use such language has pained me myself, and I do not fancy that any one has been more grieved by it than myself.

JAMES H. F. BRANSON.

2nd March 1883.

No. 4.

LETTER from the GOVERNMENT OF INDIA (Legislative Department),
No. 38 of 1883, to the SECRETARY of STATE for INDIA.

MY LORD,

Simla, the 17th August 1883.

WE have the honour, in continuation of our Legislative Despatch, No. 35, dated the 10th instant, to forward herewith a copy of the Bill to amend the Code of Criminal Procedure, altered in the manner in which we are advised it will be desirable to alter it in order to give effect to the views expressed in that Despatch.

2. It has been suggested to us that it may be desirable to introduce into the new provisions regarding the transfer of cases which we propose to insert in Chapter XLIV. of the Code some words to guard against their being resorted to merely with a view to delaying proceedings; but this and other like points of minor detail may well be reserved for consideration at a later stage.

We have, &c.,

(Signed)

RIPON.

D. M. STEWART.

E. BARING.

T. F. WILSON.

C. P. ILBERT.

S. C. BAYLEY.

T. C. HOPE.

No. 5.

A Revised BILL to Amend the Code of Criminal Procedure, 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882; X. of 1882.

Preamble.

It is hereby enacted as follows :—

1. In Section 25, after the words “British India,” the following shall be inserted :—

Amendment of Section 25.

“Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving.”

2. In Section 443, the words “and an European British subject” shall be omitted.

Amendment of Section 443.

3. In Section 444, for the words “unless he himself is an European British subject,” the words “unless he is a Justice of the Peace” shall be substituted.

Amendment of Section 444.

4. Section 450 and the last sixteen words of Section 459 are hereby repealed, and in the latter section after the words "any Magistrate" the words "or any Judge presiding in a Court of Session" shall be inserted.

Repeal of Section 450 and amendment of Section 459.

5. In Section 526, after Clause (d) the following shall be inserted, namely,—
Amendment of Section 526. "or (e) that such an order is expedient for the ends of justice."

New Section inserted after Section 526.

6. After Section 526 the following section shall be inserted, namely,—
"526 A. When in any criminal case or appeal, before the commencement of the hearing, the Government, the complainant or the accused notifies to the Court before which the case is pending its or his intention to make an application under Section 526 for the transfer of the case or appeal, the Court shall, in order to give time for the application being made and an order being obtained thereon, exercise the powers of postponement or adjournment given by Section 344."

Adjournment of hearing pending application under Section 526.

X. of 1882. 7. (1.) In this Act "section" means section of the Code of Criminal Procedure, 1882.
Construction of Act with Code of Criminal Procedure.
(2.) All reference to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

No. 6.

LETTER from the GOVERNMENT of INDIA (Legislative Department),
No. 48 of 1883, to the SECRETARY of STATE for INDIA.

MY LORD,

Simla, the 14th September 1883.

WE have the honour to forward a copy of a Memorial* which we have received from the Chairman of a Public Meeting held in the Town Hall of Calcutta, on the 23rd August 1883.

* Paper, No. 76, relating to the Bill (See Command Paper, No. 3877 page 541).

2. The papers of which the publication is asked for by the Memorialists, were published in an extra Supplement to the Gazette of India at Calcutta, on the 8th instant.

3. With respect to the request of the memorialists that the further consideration of the Bill for amending the Code of Criminal Procedure may be postponed until Parliament has had an opportunity of considering the opinions and reports submitted to the Government of India in connection with that measure, we should be glad to be favoured with an expression of your Lordship's views. We desire, however, to say that it would, in our judgment, be highly undesirable that the final settlement of the question raised by the Criminal Procedure Code Amendment Bill should be postponed beyond the termination of the approaching sittings of the Legislative Council at Calcutta.

We have, &c.,
(Signed) R. IPON,
D. M. STEWART.
T. F. WILSON.
C. P. ILBERT.
S. C. BAYLEY.
T. C. HOPE.

No. 7.

DESPATCH from the SECRETARY of STATE for INDIA (Legislative Department), No. 48 of 1883, to the GOVERNMENT of INDIA,

India Office,

MY LORD MARQUIS,

London, the 8th of November 1883.

Para. 1. I HAVE received and considered in Council your Letter of 10th August 1883, No. 35, with its enclosures, your Letter of 17th August 1883, No. 38, enclosing a copy of a Bill to amend the Code of Criminal Procedure, 1882, as proposed to be altered by you, and your Letter of 14th September 1883, No. 48, forwarding a memorial relating to this Bill in its original form.

2. On the 9th of September 1882, your Lordship in Council submitted to the Secretary of State a proposal for modifying the existing law respecting criminal jurisdiction over European British subjects. You observed that, having consulted the Local Governments and heads of Administrations, you found an overwhelming consensus of opinion that the time had come for removing the present absolute bar upon the investment of Native Magistrates in the interior with power over European British subjects. You placed before Lord Hartington the outline of a measure by which you proposed to give effect to this view, by providing that, in future, all District Magistrates and Sessions Judges should be vested with the powers in question in virtue of their office, and by permitting the Local Governments, outside the Presidency towns, to confer these powers upon those members (a) of the Covenanted Civil Service; (b) of the Native Civil Service, constituted under the statutory rules; and (c) of the Non-Regulation Commissions, who should be exercising first class magisterial powers, and were in their opinion fit to be entrusted with the new jurisdiction. You added, that you would make no distinction in the law between European and Native officers. You requested Lord Hartington's sanction to the introduction into your Legislative Council of a Bill to amend the Code of Criminal Procedure in the necessary particulars, and you asked that his sanction should be communicated to you at as early a date as possible.

3. On 7th December 1882 my predecessor intimated to you that he was prepared to sanction the introduction of a Bill such as you had suggested, and accordingly a Bill to amend the Code of Criminal Procedure, 1882, was prepared under your instructions, and was introduced into your Council for making Laws and Regulations on the 2nd of February of the present year. Your proposals having excited much opposition among the European community settled in India, your Lordship again consulted the Local Governments on the subject of the intended change in criminal jurisdiction.

4. You now forward to me the opinions of those Governments, and also of the High Courts and of a large number of civil officers and other persons whom the Local Governments have consulted, and you state that, having given your most careful and deliberate consideration to these opinions, to the discussions in the press, and to the strong dislike displayed towards the Bill by the European community, the conclusion at which you have arrived is that the withdrawal of the Bill, although recommended by many persons whose opinions are entitled to great consideration, would not afford such a solution of the question to be determined as it is open to the Government to adopt, but you recommend that certain modifications should be made in the Bill as originally introduced.

5. You now propose that the Bill should be limited to conferring jurisdiction over European British subjects on Native officials while holding either temporarily or permanently the office of District Magistrate or Sessions Judge, and you observe that the high position of these officers, and the long training through which they must have passed before they are appointed to such important posts, will afford the greatest possible security for their knowledge, experience, and integrity.

6. You further propose to adopt a suggestion of the Chief Justice of Madras, that the power of the High Courts to remove criminal cases from

one Court to another shall be enlarged, so as to enable them to order the transfer whenever the ends of justice may, in their opinion, require it.

7. Lastly, you recommend that the Bill be amended, by omitting Section I, and thus leaving unchanged the present powers of Local Governments with respect to the appointment of Justices of the Peace.

8. Your Lordship's Despatch and the accompanying papers have received the careful attention which their importance deserves, and, after anxiously considering the subject in all its bearings, I have now to acquaint you that I entirely agree with you that the Bill should be proceeded with, and that I concur in the propriety of modifying it in the manner you propose.

9. The Bill, as you now intend to frame it, is so guarded and moderate in its provisions that it may reasonably be expected to allay the excitement aroused in the minds of the European community in India by the more extensive measure originally proposed.

10. With regard to the request made in the memorial forwarded in your Despatch of 14th September, on which you desire to be favoured with my opinion, Her Majesty's Government do not see any good reason why a measure which lies entirely within the competence of your Legislative Council, and is already before that body, should be postponed until Parliament meets, and they conclude, therefore, that the Bill will be taken up in the ordinary course of business, so that it may be disposed of during the usual session of the Legislative Council at Calcutta.

I have, &c.,
(Signed) KIMBERLEY.

No. 8.

DESPATCH from the SECRETARY of STATE for INDIA (Legislative Department), No. 51 of 1883, to the GOVERNMENT of INDIA.

India Office,

MY LORD MARQUIS, London, the 6th of December 1883.

I FORWARD for the information of your Excellency in Council, copy of a memorial* addressed to me by the London Committee of the Anglo-Indian Association, together with a copy of the answer† which I have caused to be sent to the memorialists, on the subject of the Bill to amend the Code of Criminal Procedure now under the consideration of the Governor General of India in Council for making laws and regulations.

I have, &c.,
(Signed) KIMBERLEY.

No. 9.

CORRESPONDENCE between the London Committee of the Anglo-Indian Association and the India Office.

To the RIGHT HONOURABLE the EARL OF KIMBERLEY, Her Majesty's Principal Secretary of State for India in Council.

MY LORD, London, 7th November 1883.

ON the 26th July last we presented to your Lordship, on behalf of a large body of Anglo-Indians residing in this country, a memorial praying, for reasons which were very fully stated, that Her Majesty's Government would be pleased to order the withdrawal of the Indian Criminal Procedure Act Amendment Bill, which for several months has been pending before the Council of the Governor General of India. In that memorial, and in the observations which were addressed to your Lordship by the members of our deputation when presenting it, we were able to refer only in general terms to the very strong opposition with which the Bill has been received by a large majority of Englishmen in India, official as well as non-official. The official reports of the public servants, both English and Native, in every province in India, to whom, in conformity with the assurance given by the Governor General in the debate in the Council in March last, the Bill was referred, were published on the 8th September last in a voluminous supplement of the

"Gazette of India," of which only a few copies have been received in this country, and we are informed that, owing to the non-receipt of the reports before the prorogation of Parliament, they cannot be made public here in a complete form until after Parliament reassembles.

2. In these circumstances we desire to urge upon your Lordship that the Government of India should be instructed to postpone further proceedings in this matter until the reports in question shall have been presented to Parliament, and until the Members of both Houses of Parliament, and the public generally, shall have had a full opportunity of deliberately considering the opinions which have been submitted to the Government of India by the various administrative and judicial officers who have been consulted on the Bill. On perusal of the reports, as published in the "Gazette of India," we find that, whether as regards numbers or as regards weight of experience and authority, there is very great preponderance of official opinion which is earnest and emphatic in its condemnation of the Bill. We submit that, in the face of this large body of adverse opinion emanating from servants of the Crown, most of whom possess long and varied experience of Indian administration, while among them are not a few who have rendered distinguished services to the State, and supporting, as it does, the almost unanimous opinion, not only of the unofficial English community in India, but of all classes of Anglo-Indians in this country, it would be in the last degree impolitic and unwise to press on legislation before the Parliament and the public in this country have had ample time to consider the question with the aid of the further information which has been collected.

3. We will not occupy your Lordship's time by dwelling upon the many remarkable facts and considerations which have been adduced against the Bill in the reports to which we refer, but we would earnestly invite your attention to a passage in the report of Colonel Bradford, Agent to the Governor General in Rajputana, where reference is made to a Resolution issued by the Government of Lord Lawrence, under date 19th August 1867, directing the local administrations to frame their proposals for opening up to Natives of ability and character a more important and dignified and lucrative sphere of employment in the administration of British India, "with due regard to the expediency of providing English officials for all districts in which European settlers or travellers abound," on the ground that "Natives entrusted with administrative duties have a difficulty in dealing with independent Europeans." We submit that this injunction, issued by one of the most eminent Indian statesmen of modern times, who was a staunch advocate of a liberal policy in the matter of advancing Natives of India in the public service, at a time when that policy was engaging the serious consideration both of the Home Government and of the Government of India, affords in itself a strong condemnation of Lord Ripon's measure.

We have, &c.,
(Signed) ALEX. J. ARBUTHNOT.
J. R. BULLEN SMITH.
J. DACOSTA.
ROPER LETHBRIDGE.
J. M. MACLEAN.
G. B. PARTRIDGE.
W. S. SETON KARR.

On behalf of the Anglo-Indian Association (London Committee) for obtaining the withdrawal of the Indian Criminal Procedure Act Amendment Bill.

SIR,

India Office, S.W.,
27th November 1883.

I AM directed to acknowledge the receipt of your letter of the 7th instant, transmitting a further memorial addressed to the Secretary of State for India in Council by yourself and others on behalf of the London Committee of the Anglo-Indian Association, on the subject of the Bill to amend

the Code of Criminal Procedure now under the consideration of the Governor General of India in Council.

In reply, I am to state that a memorial from certain European British subjects assembled at a public meeting, held in the Town Hall, Calcutta, on the 23rd of August last, urging the postponement of the Bill on grounds similar to those set forth in the memorial forwarded by you, was transmitted to the Secretary of State by the Government of India, who have been informed that Her Majesty's Government do not see any good reason why a measure which lies entirely within the competence of the Indian Legislative Council, and is already before that body, should be postponed until Parliament meets.

I am to add that the reports to which you refer are printing, and will be published here as soon as they are ready.

I have, &c.,
(Signed) J. A. GODLEY.

Sir Alexr. J. Arbuthnott, K.C.S.I.

No. 10.

EXTRACT from the PROCEEDINGS of the COUNCIL of the GOVERNOR GENERAL of INDIA, assembled for the purpose of making Laws and Regulations under the provisions of Act of Parliament, 24 & 25 Vict., cap. 67.

THE Council met at Government House on Friday, the 7th December 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., presiding.

The Honourable J. Gibbs, C.S.I., C.I.E.

„	„	C. P. Ilbert, C.I.E.
„	„	Sir S. C. Bayley, K.C.S.I., C.I.E.
„	„	T. C. Hope, C.S.I., C.I.E.
„	„	Sir A. Colvin, K.C.M.G.
„	„	Rájá Siva Prasád, C.S.I.
„	„	W. W. Hunter, LL.D., C.I.E.
„	„	Durgá Charan Láhá.
„	„	H. J. Reynolds.
„	„	H. S. Thomas.
„	„	G. H. P. Evans.
„	„	Kristodás Pál, Rai Bahádur, C.I.E.
„	„	J. W. Quinton.
„	„	T. M. Gibbon, C.I.E.
„	„	R. Miller.
„	„	Amír Alí.

Criminal Procedure Code Amendment Bill.

His Excellency the PRESIDENT said:—

I would now ask the members of this Council to remain for a short time, while I make a statement upon the important subject of the Bill, which is now before the Council, for the amendment of the Criminal Procedure Code. The course which I am taking upon this occasion is, no doubt, not provided for by the rules of business of this Council, but it is not without precedent, and it cannot be doubted that it is advantageous, upon special occasions, that the Viceroy should reserve to himself the right to make, upon behalf of the Government, a statement in this Council, although no question is technically before it, in reference to a matter of great public interest. And I am the more justified, as it seems to me, in taking this somewhat unusual course, because I have observed that complaints have been made in many quarters of the silence of the Government during the last two months upon the

question to which I am about to refer, and that it has been said that they ought, before this, to have given some explanation to the public of the steps which they had been taking in regard to this matter. I, and I am sure all my colleagues, greatly regret that it should have been thought by any one, that the Government of India have in any respect acted with a want of consideration for the feelings of the opponents of this measure, or with any want of courtesy to those who have addressed representations to the Government upon the subject. I can truly say that nothing could be further from our intention than any such want of courtesy or of consideration, and I hope I may be pardoned for saying that nothing could be further from my personal character and disposition than to treat those who are opposed to me on any public measure with any want of consideration or courtesy.

The statement which I am now about to make will show, as it seems to me conclusively, that this is the case in regard to the complaint of which I have just spoken, because that statement will establish clearly that the Government were not, until within the last few days, in a position to make any public declaration whatever on any part of their proceedings in reference to this matter. And even now what I have to say may be looked upon as somewhat premature, and must, in some respects, be incomplete, because in the absence of two important members of the Executive Council, who have not yet arrived in Calcutta,—His Excellency the Commander-in-Chief and General Wilson, without whose presence various matters connected with the measure itself, and the mode of proceeding in regard to it, ought not to be determined by the Government,—I am not yet on some points in a position to say more than that these points have still to be considered by the Executive Council. But, nevertheless, under the circumstances to which I have adverted, I have thought it right not to delay to state to this Council, at its first meeting here in Calcutta, what has been the action of the Government in regard to this Bill since the conclusion of the sittings of the Legislative Council in this city last March. But as there is no question before the Council at this moment, and as, therefore, this is not the occasion for discussion, I feel bound to abstain from anything like controversy or even argument, and to confine myself for the present as much as possible to a bare statement of facts.

It will be in the recollection of all the members of this Council that the last step which was taken with respect to this Bill, on the 9th of March last, was to order that it should be referred, in the usual manner to the Local Governments for their consideration and report. That reference was duly made, and in course of time the opinions of the Local Governments began to come in. As they came in, they were, of course, each of them carefully examined by the members of the Government. The last of these reports of Local Governments reached Simla on the 24th of July, and the Government then lost no time in carefully and deliberately considering the course which they thought ought to be pursued with respect to this measure, after the examination of the various opinions which had been offered upon it; and they were in a position to address the Secretary of State upon the subject on the 10th of August last.

I do not think that any one will say, looking to the great importance of this question, and the necessity of proceeding with all due deliberation in regard to it, that any time was lost by the Government, if, having received the last of the opinions of Local Governments on the 24th July, they were ready to lay their views before the Secretary of State in a Despatch which left Simla on the 10th of August following.

In that Despatch, the Government of India, while expressing their opinion that the principles of policy upon which the Bill is founded ought not to be abandoned, proposed certain modifications of the measure, calculated, as they hoped and believed, to remove objections which had been urged against some of its proposals upon grounds which did not raise the question of principle. These modifications were the following:—They proposed that the jurisdiction to be conferred by the Bill upon Native Magistrates over Europeans British subjects should be confined to District Magistrates and Sessions Judges *ex-officio*. They proposed to leave unchanged the present

powers of the Local Governments with respect to the appointment of Justices of the Peace; and they also proposed to adopt a suggestion of Sir Charles Turner, the Chief Justice of Madras, for amending Section 526 of the Code of Criminal Procedure. That section enacts that "whenever it is made to appear that a fair and impartial inquiry cannot be had in any Criminal Court, or that some question of law of unusual difficulty is likely to arise," the High Court may transfer a case to another Court or to itself. Sir Charles Turner suggested that the High Court should be authorized to make the transfer in any case in which it should be made to appear that "it was expedient for the ends of justice," and that it would be desirable to supply what appeared to be a defect in the section by directing that in any case in which, before the commencement of the hearing, the Government, the complainant, or the accused should notify to the Court an intention to make an application of transfer, the Court should adjourn the hearing for such reasonable time as might be required to enable an application to be made and an order obtained upon it.

These were the modifications which were suggested in our Despatch of the 10th August to the Secretary of State. I, in accordance with what I have said just now, shall not upon the present occasion enter into any arguments on these points. Whenever an opportunity for debate arrives, the Government will be quite ready to state the grounds upon which they suggested those modifications, and the views which they entertain in respect to the effect which they will have upon the provisions of the Bill.

That, in brief, was the nature of the proposals contained in the Despatch. To make this statement complete, I ought to say that our Honourable friend and colleague General Wilson, in regard to this Despatch as to the former one, maintained the position which he had previously taken up of objecting to the measure altogether. The Despatch, as I have said, went home on the 10th of August; it was considered by Her Majesty's Government at home and by the Secretary of State in Council; and in a reply, dated the 8th of November last, the Secretary of State in Council expressed his concurrence in the proposals of the Government of India. That reply reached Calcutta last Saturday, the 1st of December, and this, consequently, is the earliest opportunity which has been afforded to me since that Despatch came into the hands of the Government for making any statement with regard to this matter.

There is also another question, connected not with the substance of this measure but with the manner of proceeding with it, to which I wish to refer on this the earliest opportunity. In the month of September last the Government received a memorial from the Chairman of the Anglo-Indian Defence Association, which contained two requests. The first was that the papers which had been received from the Local Governments in connection with this Bill should be published at once; and the second was that further proceedings with regard to the Bill should be stayed until Parliament had had an opportunity of considering the Bill and expressing its opinion upon it. In the reply which was sent to that memorial the memorialists were informed that their first request had already been complied with, and that the papers relating to the matter had been published in the "Gazette," where they appeared, I think, on the 8th of September. They were published at the earliest moment possible; we only waited until we had ascertained that the Despatch we had sent home was in the hands of the Secretary of State, and until we were informed that he had no objection to the publication of the papers. The second request of the memorialists, namely, that any further proceedings with regard to the Bill should be put off until Parliament had had an opportunity of discussing the question and of pronouncing an opinion upon it, related to a matter which was essentially and entirely in the hands of Her Majesty's Government. Any question concerning proceedings in Parliament necessarily can only be determined by the Government at home. Such questions are altogether beyond the scope of the Government of India, and the Cabinet alone can decide what course should be taken upon any matter involving the proceedings of either House of Parliament. The memorial was forwarded by the next mail, after it had been received, to the Secretary of State, and his opinion on the subject of postponement was

asked by the Government of India, who only said that the questions raised by the Bill ought, in their judgment, to be settled, one way or the other, before the end of the next sittings of the Legislative Council in Calcutta. In the same Despatch in which the Secretary of State replied to our general proposals, he replied also to that particular request of the Anglo-Indian memorial, and he informed us that Her Majesty's Government do not see any good reason why a measure, which lies entirely within the competence of this Legislative Council, and is already before that body, should be postponed till Parliament meets, and they conclude, therefore, that the Bill will be taken up in the ordinary course of business, so that it may be disposed of during the usual session of the Legislative Council at Calcutta.

I stated in the debate on the 9th March last as my personal opinion that, if the opponents of the Bill desired to appeal to the House of Commons, I should be the last person to object to such a course. I entertain the same feeling still, and I have made no concealment of it. It will be observed that the Secretary of State in his reply leaves a certain discretion to the Government of India as to the mode of proceeding with regard to this Bill within well defined limits. I am not yet in a position, in consequence of the absence of the two members of the Executive Council to whom I have referred just now, to say exactly when the next step with regard to this Bill will be taken. It is a subject which will be considered shortly by that Council. The next step, in the ordinary course of business, will be the reference of the Bill to a Select Committee, who will consider the Bill and any amendments which may be proposed in it, and due notice will of course be given to Honourable members of this Council before any motion to refer the Bill to a Select Committee is brought before them.

Such is the statement which I desire to make as to the action of the Government of India in respect to this Bill since March last. It shows clearly, as it seems to me, that, until last Saturday, when the Despatch from the Secretary of State reached Calcutta, the Government here was not in a position to make any public declaration on the subject. The question was one which was originally referred to the Secretary of State, and the proposed proceedings of the Government of India received his sanction. It was one which, from the circumstances of the case, could not be dealt with by the Government of India, except in consultation with Her Majesty's Government; and one of the points, that relating to the proposal to postpone the Bill until after the meeting of Parliament, was wholly within the province of Her Majesty's Government at home, and could only be decided by them. Until, therefore, we were in possession of the views of Her Majesty's Government, we were debarred altogether from saying anything in public on the subject. I have, however, seen it said that, when Her Majesty's Government at home determined on the course which they were going to take, and the answer which they proposed to send, that course might have been communicated to the Government of India by telegram, and that, after having received that telegram, the Government of India might have made a statement to the public. Now, it appears to me, first, that it would have been inconsistent with ordinary practice, and with official propriety, to make a public statement of this kind upon a telegram, unless Her Majesty's Government had directed that we should do so. But, further than that, I cannot think it would have been at all safe for the Government of India to have made any such statement upon a telegraphic communication. Suppose that that had been done, and suppose that when the Despatch came, and had been made known to the public, it had been possible to say that there was any inconsistency between the statement made upon the telegraphic communication and the precise words of the Despatch from the Secretary of State, I leave it to the members of this Council to consider whether that would not have produced a result very far from desirable.

It seems to me that it was absolutely necessary that I should be in a position to do what I have done to-day, namely, to use the precise language of the Secretary of State in explaining his views. Until the words in which those views were expressed were in my possession, I could not with any discretion have spoken in public upon the subject. Then I must also say that

it appears to me that the proper place to make the first public declaration upon any proceedings connected with a measure which is before this Legislative Council is in this Legislative Council itself. I think that members of Council might have complained perhaps, if I, as the President of this Council, had made any such statement elsewhere. I am sure that most legislative bodies would undoubtedly have felt that in such a case some kind of slight had been cast upon them, although I have such confidence in the good feeling of the members of this body that I believe that, if I had been in a position to make such a statement, and had thought it right in the interest of the public to do so, some weeks ago, and at a time when this Council was not sitting, they would have overlooked any apparent discourtesy which might have been involved in such course; and, if an opportunity had been afforded me, I should probably not have hesitated to avail myself of it. But, as I have said before, the information was not in my possession until last Saturday, and this is the first public occasion on which a statement of that kind could have been made.

I will say no more now. The immediate occasion is not, as I have said, one which admits of the introduction of any controversial matter, but I cannot conclude these few remarks without repeating that those who think that I or my colleagues have felt a cold indifference to the representations of those who are opposed to this Bill, are entirely in error. The silence we have maintained till now has, as I have shown, been a necessary silence. Now that I have spoken, I earnestly trust that no word which has fallen from me will tend to add to the bitterness of the present controversy.

No. 11.

LETTER from the GOVERNMENT of INDIA (Legislative Department),
No. 70 of 1883, to the SECRETARY of STATE for INDIA.

MY LORD,

Fort William, the 31st December 1883.

WE have the honour to forward herewith a copy of a letter, No. 1887, dated the 15th instant, from the Officiating Registrar of the High Court at Calcutta to the address of the Secretary in our Legislative Department.

* "Times" of 24th August last.

relative to the Observations which the Marquis of Hartington is reported* to have made in his speech during the Indian Budget debate of the 23rd August last in reference to the letter† of 23rd May last from that Court on

the subject of the Bill to amend the Code of Criminal Procedure in so far as it relates to the exercise of jurisdiction over European British subjects.

2. A copy† of that letter, with other papers, was forwarded to your Lordship under cover of our Legislative Despatch, No. 35, of the 10th

August last.

† Printed Paper No. 46 of the Bill.

We have, &c.,
(Signed) RIPON.
D. M. STEWART.
J. GIBBS.
T. F. WILSON.
C. P. ILBERT.
S. C. BAYLEY.
T. C. HOPE.
A. COLVIN.

No. 12.

LETTER from C. A. WILKINS, Esq., OFFICIATING REGISTRAR of the HIGH COURT of JUDICATURE at Fort William in Bengal, to the SECRETARY to the GOVERNMENT of INDIA, Legislative Department.

No. 1887.

SIR,

Fort William, the 15th December 1883.

I AM desired to invite

the attention of His Excellency the Governor General in Council to the observations which the Marquis of Hartington is reported to have

High Court, English Department.

Criminal.

made in his speech in the Indian Budget Debate of 23rd August* last in reference to the letter which I was directed by the

Present:

* Reported in the "Times" of 24th August.

The Honourable Sir R. Garth,
Knight, Chief Justice,
The Honourable R. C. Mitter,
The Honourable H. S. Cunningham,
The Honourable W. F. McDonell,
V.C.,

Judges to address to you on the 23rd May last on the subject of the Bill to amend the Code of Criminal Procedure.

The Honourable L. R. Tottenham,
The Honourable A. T. Maclean,
The Honourable C. D. Field,
The Honourable J. F. Norris,
The Honourable J. Q. Pigot, and
The Honourable J. O'Kinealy,

The report of that speech reached this country when the Court had broken up, and the Judges had separated for the long vacation. On re-assembling at the close of the vacation, the Judges met to consider it, and they have come to the conclusion that it is their duty to submit the following observations on the

Judges of the Court.

subject to the Government of India.

2. His Lordship is reported to have said, "Able as that document is, I cannot admit that it is invested with any judicial authority whatever. The partisan character of that document is most strikingly exemplified in the 18th paragraph. Sir Steuart Bayley would be supposed by any one reading that paragraph to be an opponent of the measure; whereas he was responsible for its introduction and was its supporter. I think I am justified in saying that the minute of the Judges was not a judicial performance, but rather the offspring of partisanship."

3. The Judges cannot but regard these observations as conveying a very serious imputation on the manner in which one highly important branch of their public duties is discharged. The letter in question was, as its opening sentence explains, not volunteered by the Judges, but written in answer to one in which the Government of India requested "an expression of the Judges' opinion on the provisions of the Bill." It has been, as His Excellency in Council is aware, the constant practice of Government to consult the High Courts on all important measures of legislation; and the Judges regard it as amongst the most important and responsible of their duties to consider such references with attention, and to offer, either collectively or individually, such advice and assistance to the Government as it is in their power to give. In measures which affect the organization and procedure of the Courts, the practical enforcement and operation of the law, the amendment of such portions of it as are found to work harshly or inconveniently, or the codification of such parts of it as it is deemed expedient to codify, it is to the Judges of the High Court, acting as they ordinarily do, not only on their own experience, but on that of a large number of subordinate tribunals, that the Government must mainly look, and has usually looked, for accurate information and trustworthy guidance.

4. When the Bill in question, which introduced an important change in the powers of Native Judges and Magistrates and in the legal status of Europeans in India, was referred to the Judges for opinion, they considered it with the utmost care; and, after protracted and anxious deliberation, eleven out of twelve Judges arrived at the conclusions which were expressed to you in my letter. They had, of course, no personal interest in the question, and they were conscious of no desire in connection with it but to offer to the

Government, as they were in duty bound to do, with perfect candour and explicitness, their convictions on the subject and the grounds on which those convictions rested. The Judges considered that, in expressing their opinions as they did, they were but acting in accordance with custom, and responding to an express invitation and the assurance, given in the debate of 9th March, that the Government was anxious to consider the arguments adduced on both sides in the discussion. The Judges are not aware that the language of my letter, conveying their views, is in any way chargeable with violence, exaggeration, or other indication of partisanship. It is unnecessary for them to point out that no such indication is afforded by the omission, in my letter, to state the fact that Sir Steuart Bayley was a supporter of the Bill—a fact which was perfectly notorious, and which had no bearing on the argument, except in so far as Sir Steuart Bayley's opinion on the point in question was of the more weight as coming from a supporter of the proposed legislation. Lord Hartington appears to have forgotten that the letter was addressed, not to the public, but to the Government of which Sir Steuart Bayley was a member, and which would not be misled by any statement in the letter as to that gentleman's opinion. The Judges cannot but consider that the imputation of partisanship, based, apparently, on no stronger ground than this, was wholly undeserved and unjustifiable. Their opinion on the Bill was not, from the nature of the case, "invested with judicial authority" in the ordinary sense of that expression; but in so far as it conveyed the opinions of the Judges on a subject of judicial administration, upon the probable effects of which the Judges were in a better position than any one else to arrive at a well informed opinion; in so far as it was formed deliberately, carefully, conscientiously, after a patient and exact consideration of the facts; in so far as, in offering it, the Judges were not volunteering their advice, but replying in the regular course to a question which the Government had a right to ask, and which it was their duty to answer, it was "judicial" in the strictest sense of the word, and they emphatically repudiate the charge that, in writing as they did, they were influenced by any partisan feeling or by any other motive than that of endeavouring to discharge with fidelity one of the important and responsible duties with which they have been entrusted by Her Majesty.

5. It would, the Judges consider, be to the detriment of the public service, either if the present practice of consulting the High Courts in matters of legislation were abandoned, or if the opinions of the Judges, given on the matters so referred, were to be treated with indifference or disrespect. Yet it can hardly be expected that Judges will be ready to undertake the duty of advising the Government on proposed changes of the law, or that their recommendations will command respect and authority, if imputations such as that to which this letter refers, made by a Minister of the Crown, who was but a short time previously Her Majesty's Secretary of State for India, were allowed to pass unchallenged. On this ground the Judges feel bound to record their regret that such an imputation should have been made. The Judges feel satisfied that His Excellency in Council will justly appreciate their motives in making the present communication; and they beg respectfully to request that this letter may be forwarded to Her Majesty's Secretary of State, and that when the correspondence of which the letter of 23rd May forms a part is laid before the Houses of Parliament, this letter may be allowed to accompany it. The Judges venture to think that their respectful answer to a charge so serious, made in their absence, may not improperly be submitted, together with the letter which formed the occasion of it, to the House in which the charge was made.

6. Several of the Judges whose views were conveyed in my former letter are now absent on leave, and the Judges have not thought it necessary that my present letter should be delayed till their return. I am desirous to state, however, that the foregoing observations are the expression of the unanimous opinion of the Judges now present in Calcutta.

I have, &c.,
(Signed) C. A. WILKINS,
Officiating Registrar.

No. 13.

FURTHER LOCAL OPINIONS received by the GOVERNMENT OF INDIA.

(a)

From PANDIT NAND LALL, Vakíl, High Court, North-Western Provinces, and Secretary, Indian Association, Allahabad, to SECRETARY to GOVERNMENT OF INDIA, Legislative Department.—(Dated 13th October 1883.)

I HAVE the honour to forward herewith copy of Resolutions adopted at a public meeting of the Hindu and Mahommedan residents held in this city on Monday, the 1st instant, in support of the Criminal Code Amendment Bill, and request the favour of your laying them before His Excellency the Viceroy and Governor General of India in Council.

(Signed) PANDIT NAND LALL.

RESOLUTIONS adopted at a Public Meeting held in Allahabad on the 1st October 1883.

President : Munshi Hanuman Prasada, Vakíl, High Court, North-Western Provinces.

I. Proposed by Munshi Kishori Lal, retired Munsif, and Secretary, Kayasth Patsala.

Seconded by Lala Ramcharan, Banker, Municipal Commissioner, Honorary Magistrate, and Member of the District Board.

That this meeting has learnt with surprise that the silence of the people of the Upper Provinces of India, in the matter of the Criminal Procedure Code Amendment Bill, has been misconstrued into an apathy; and also thinks it necessary in justice to the prevailing feeling of the community, to contradict the statements made in a recent issue of the leading Anglo-Indian journal here to the effect that the "cream" of the Native gentry in the great Northern Provinces of India are either "*indifferent*" to the measure, or "*opposed*" to it, or "*unconcerned*" in its fate.

II. Proposed by Moulvi Mehdi Hassan, Vakíl, High Court, North-Western Provinces.

Seconded by Pandit Beni Ram, Pleader.

That in the opinion of this meeting a measure of this kind has always been in request amongst the intelligent, educated, and thinking portion of the Native community of these Provinces, and the disqualification imposed upon their educated countrymen, to try European British subjects in criminal cases, by reason of their race, has always been looked upon by them, not only as anomalous and invidious, but as opposed to the avowed policy and the guiding principle of British rule in India.

III. Proposed by Pandit Lakshmi Narain, Vayasa, President, Hindu Samaj.

Seconded by Munshi Manni Lal, retired Tahsildár.

That, therefore, this meeting considers it its bounden duty to express clearly and emphatically, that the people of this part of the country regard with deep gratitude and sincere satisfaction, the introduction into the Council of His Excellency the Viceroy and Governor General of India of a Bill which is calculated to remove this invidious race distinction, and an anomaly in the administration of criminal justice in India.

IV. Proposed by Munshi Sadasukh Lal, retired Government Translator.

Seconded by Maulvi Hashmat-ul-lah, M.A., Pleader.

That this meeting most fervently hopes that the Bill, now before the Council, will ere long be passed into law, and thereby give due and just satisfaction to the intelligent, educated, and thinking portion of the people of India.

(b)

FROM MUHAMMAD MAHMÚD HUSAYN, Pleader, Upper Grade, Allahabad, to
SECRETARY to GOVERNMENT of INDIA, Legislative Department.—(Dated
8th October 1883.)

As the criminal law relating to the exercise of jurisdiction over European British subjects is under the consideration of the Legislature, *other very important changes* necessary to be made in the Criminal Procedure Code may also very opportunely be taken into consideration.

Section 4, Clause (i.) Recorders (other than the Recorder at Rangoon) and Judicial Commissioners have no jurisdiction over European British subjects, whereas their subordinates, the Commissioners of Divisions as Sessions Judges, have such jurisdiction. Is it justice for superiors not to have a jurisdiction which their subordinates have, and will it not be more convenient for an European British subject charged with murder in Oudh, and for the witnesses in the case, that he be tried by the Judicial Commissioner at Lucknow than that they be dragged down to Calcutta? I would, therefore, have for the words "and the Recorder of Rangoon" substituted the words "Recorders in British Burmah and Judicial Commissioners in other Non-Regulation Provinces."

Section 13. A 2nd Class Magistrate who is a Sub-Divisional Magistrate has no jurisdiction to try offences triable by 1st Class Magistrates, which cases he has, therefore, to commit to the Sessions Court, thereby subjecting parties and witnesses to the hardships of travelling to a more distant Sessions Court. This inconvenience to parties and witnesses may be obviated by placing only 1st Class Magistrates in charge of sub-divisions. I would, therefore, have the words "or second" omitted.

Section 22 of the Code and Section 1 of the Bill. Section 22 of the Code declares all European British subjects, whether belonging to the Covenanted Civil Service, or to any of the several commissions in Non-Regulation Provinces, or to the Uncovenanted Subordinate Executive Service, or acting as Cantonment Magistrates, or as Honorary Magistrates, to be competent to be Justices of Peace, and many European British subjects belonging to the Subordinate Executive Service, or acting as Honorary Magistrates, have been made Justices of Peace, and are discharging their duties as such to our greatest satisfaction. Section 1 of the Bill puts a stigma upon their character by declaring them to be unfit to be Justices of Peace. In the Statement of Objects and Reasons no mention whatever is made of this change in the law. Perhaps the Legislature meant no such change, and probably this was a mere oversight. Time has not yet come for all Natives of the Covenanted Civil Service, much less for members of the Native Civil Service, to be made Justices of Peace. I would, therefore, have Section 1 of the Bill withdrawn and Section 22 of the Code retained.

Section 25. In accordance with my opinion on Section 4 of the Code, I would have, for the words "and the Recorder of Rangoon," substituted the words "Recorders in British Burmah and Judicial Commissioners in other Non-Regulation Provinces."

When I said, "Time has not come for all Natives to be made Justices of Peace," I meant to say that a few of them may be made such Justices. And those few are Sessions Judges and District and Sub-Divisional Magistrates, whether they belong to the Covenanted or Native Civil Service, or to any of the several Commissions in Non-Regulation Provinces or to the Uncovenanted Executive Service. I would have Native Sessions Judges and District and Sub-Divisional Magistrates made Justices of Peace for the several reasons I have given under Sections 4 and 13 of the Code. And I would have all Sessions Judges and District and Sub-Divisional Magistrates, whether Natives or not, made Justices of Peace by virtue of their offices. I would, therefore, add after the word "India" the sentence, "Sessions Judges and District and Sub-Divisional Magistrates are Justices of Peace within and for the whole of the territories administered by the Local Government under which they are serving."

Section 89. Suppose the person dies before the expiration of the two years or after his appearance, and before he satisfies the Court of his not having

absconded, &c., what will be the effect of his death? His heirs will for ever be deprived of the property. This injustice may be prevented by allowing him to appear under the section. I would, therefore, propose that, after the figure 88, be added the words, "or any person succeeding to his property at his death," and before the word *proves* be added the words "such person" or any person succeeding to his property at his death," and for the word *he* first occurring be substituted the words "the proclaimed person," and for the last word *him* be substituted the words "the person so proving to the satisfaction of the Court."

Section 266. I would add after the word "Panjáb" the words "the Recorder at Rangoon."

Section 296. Locking up jury. And why? Because they serve Her Imperial Majesty gratis and take the trouble upon themselves at their own expense. This provision has, for the first time, been introduced into the Code with a view to prevent jurors colluding with any party, and shows that the Legislature has no faith in their impartiality; if so, why appoint them at all, and put the stigma of partiality upon their character and subject them for nothing to wrongful confinement? It will be a disgrace to the Legislature if the abominable provision be allowed to remain in the Code. The sooner it is removed the better. I would, therefore, have the section omitted.

Sections 407 and 408. In accordance with my opinion on Section 13, I would have in Section 407 the words "or any person sentenced under Section 349 by a Sub-Divisional Magistrate of the second class," and in Section 408 the words "by a Magistrate of the first class" omitted.

Section 431. Suppose

- (i.) A prefers an appeal under Section 405, and dies pending the appeal.
- (ii.) B is convicted under Section 121 of the Penal Code, and sentenced to transportation for life and forfeiture of all his property. The sentence of forfeiture is immediately carried into execution, and all his property is taken possession of by the Collector on behalf of Government. B prefers an appeal against his conviction, and dies pending the appeal.
- (iii.) C is convicted under Section 123 of the Penal Code, and sentenced to one year's rigorous imprisonment and 500 rupees fine. The fine is immediately realized by sale of his moveable property. He prefers an appeal against his conviction, and dies pending the appeal.

In all these cases the appeals abate, and the consequence is that the heirs of the Appellants are for ever deprived of the heritage, simply because of the uncertainty of success in appeal. To prevent this injustice, I would add to the section the sentence, "but, for the purpose of succession to his property, he shall be deemed to have died after his success in appeal."

Section 443 of the Code and Section 3 of the Bill. In accordance with my opinions under Sections 22 and 25 of the Code, I would have Section 3 of the Bill withdrawn, and would have in Section 443 of the Code for the words "case of a Presidency Magistrate" substituted the words "cases of Presidency District and Sub-Divisional Magistrates."

Section 444. In accordance with my opinion on Section 25, I would have all Sessions Judges, whether European British subjects or not, invested with jurisdiction over European British subjects, but time has not come for Native Additional, Joint and Assistant Sessions Judges to be invested with jurisdiction over those subjects. Nor is it necessary to invest them with such jurisdiction, as the Sessions Judge himself has such jurisdiction, and no inconvenience will be caused to parties and witnesses. I would, therefore, add after the word *subject* first occurring the words "unless he is the Sessions Judge; but, if he is not, the Sessions Judge."

Section 446. Since 1st January 1873, *i.e.*, very nearly for eleven years, Magistrates have given us every satisfaction of having exercised their powers under the section with due care and caution. It is now time for an advance to be made towards an increase of their powers. And I would

extend the three months' imprisonment in the case of District Magistrates empowered under Section 30 to one year, and in the case of other Magistrates to six months' imprisonment, and I would put no restriction to the amount of fine to be inflicted by District Magistrates empowered under Section 30. I would, therefore, have, for the last 21 words, substituted the words and clauses, "the following, *i.e.*,

- “(a) District Magistrates empowered under Section 30—imprisonment for
“a term not exceeding one year, or fine, or both.
- “(b) Other Magistrates—imprisonment for a term not exceeding six
“months, or fine not exceeding 1,000 rupees, or both.”

Sections 447 to 449. For the same reason Sessions Courts should also have their powers increased. And I would have them empowered to try all offences not punishable with death, and to pass sentence of imprisonment exceeding two years. I would, therefore, have in Sections 447 and 448 the words “or with transportation for life” omitted, and in Section 449 two years substituted for one year.

Section 450. In accordance with my opinion on Section 444, I would have the section omitted.

Section 454. Under the old Code the Magistrate had to ask the prisoner whether he was an European British subject or not only when he believed him to be so. Under this section he has to ask him the question, not only when he believes him to be an European British subject, but also when he suspects him to be so. This section is, therefore, an advance upon the old Code towards keeping up and strengthening the privilege of an European British subject. And it is contrary to the object of the Bill for amendment of the Criminal Procedure Code. Next, suppose the prisoner waives his right and the Magistrate forgets to ask him the question; this omission does not affect the validity of the preceding (Section 534), but does it revive the waived right of the prisoner? Certainly not. If so, why retain the provision in the section? I would, therefore, have para. 2 omitted.

Section 459. In accordance with my opinions under Sections 443 and 444, I would add before the word “Magistrate” last occurring the words “non-sub-divisional,” and would have the words “or Sessions Judge” omitted.

Chapter XXXVII. This chapter is very important. In my opinion the provisions are fit to be extended to the Mufassal within the limits of the appellate civil jurisdiction of all the chartered High Courts. I would, therefore, add in para. 1 after the word Bombay the words “or the High Court of Judicature for the North-Western Provinces,” and would have in clause (a) for the words “ordinary original” the word *appellate*, and in clause (f) for the words “such limits” the words “the limits of its ordinary original civil jurisdiction.”

Section 534. In accordance with my opinion on Section 454, I would have the section omitted.

(Signed) MUHAMMAD MAHMUD HUSAYN.

P.S.—I herewith subjoin a draft Act.

DRAFT ACT NO. OF 188 .

An Act to amend the Criminal Procedure Code Act No. X. of 1882.

Preamble. Whereas it is expedient to amend the Criminal Procedure Code Act No. X. of 1882, it is hereby enacted as follows:—

1. This Act may be called “The Criminal Procedure Code Amendment Act, 1882,” and shall form part of Act No. X. of 1882, and shall come into force at once.

Interpretation.
Act No. X. of 1882.

2. In this Act, “section” means section of the Criminal Procedure Code

3. In Section 4, clause (i.), for the words "the Recorder of Rangoon" shall be substituted the words "Recorders in British Burma and Judicial Commissioners in other Non-Regulation Provinces."

Amendment of Section 4, clause (i.).

Amendment of Section 13.

4. In Section 13, the words "or second" shall be omitted.

5. In Section 25, for the words "and the Recorder of Rangoon" shall be substituted the words "Recorders in British Burma and Judicial Commis-

Amendment of Section 25.

sioners in other Non-Regulation Provinces," and after the word India shall be added the sentence, "Sessions Judges and District and Sub-Divisional Magistrates are Justices of Peace within and for the whole of the territories administered by the Local Government under which they are serving."

6. In Section 89, after the figure 88 shall be added the words "or any person succeeding to his property at his death," and before the word *proves* shall be added the words "such person or any person succeeding to his property at his death," and for the word *he* first occurring in the section shall be substituted the words "the proclaimed person," and for the last word *him* shall be substituted the words "the person so proving to the satisfaction of the Court."

Amendment of Section 89.

Amendment of Section 266.
Recorder at Rangoon."

Repeal of Sections 296, 450, 454 (paragraph 2), and 534.

7. In Section 266, after the word "Panjáb" shall be added the words "the

8. Sections 296 and 450, the second paragraph of Section 454, and Section 534 are hereby repealed.

9. In Section 407, the words "or any person sentenced under Section 349 by a Sub-Divisional Magistrate of the second class" shall be omitted.

Amendment of Section 407.

10. In Section 408, the words "by a Magistrate of the first class" shall be omitted.

Amendment of Section 408.

11. To Section 431 shall be added the sentence, "but, for the purpose of succession to his property, he shall be deemed to have died after his success in appeal."

Amendment of Section 431.

12. In Section 443, for the words "case of a Presidency Magistrate" shall be substituted the words "cases of Presidency, Districts and Sub-Divisional Magistrates."

Amendment of Section 443.

13. In Section 444, after the word *subject* first occurring in the section shall be added the words "unless he is the Sessions Judge; but, if he is not the Sessions Judge."

Amendment of Section 444.

14. In Section 446, for the last 21 words shall be substituted the words and clauses, "the following, namely:—

Amendment of Section 446.

- "(a) District Magistrates empowered under Section 30—imprisonment for a term not exceeding one year, or fine, or both:
- "(b) Other Magistrates—imprisonment for a term not exceeding six months, or a fine not exceeding 1,000 rupees, or both."

15. In Sections 447 and 448, the words "or with transportation for life" shall be omitted.

Amendment of Sections 447 and 448.

Amendment of Section 449.

16. In Section 449, two years shall be substituted for one year.

17. In Section 459, before the word "Magistrate" last occurring in the section shall be added the words "Non-

Amendment of Section 459.

Sub-divisional," and the words "Sessions

Judge" shall be omitted.

18. In Section 491, in the first paragraph, after the word "Bombay" shall

Amendment of Section 491.

be added the words "or the High Court
"of Judicature for the North-Western

"Provinces," and in clause (a) for the words "ordinary original" the word *appellate*, and in clause (f) for the words "such limits" the words "the
"limit of its ordinary original civil jurisdiction" shall be substituted.

(c.)

From SECRETARY, KAYASTHA LITERARY and NATIONAL ASSOCIATION, Ajmer,
to SECRETARY to GOVERNMENT of INDIA, Legislative Department.—
(No. 84, dated 10th November 1883).

At the instance of the Kayastha Literary and National Association, Ajmer, I have the honour to forward herewith a memorial containing the views of the members of the said Association on the Criminal Code Amendment Bill, with a request that you will be pleased to place the same before His Excellency for favour of perusal and consideration.

I regret the delay that has happened in the submission of this memorial, on account of some unavoidable causes, and seeing the time high the address could not be printed. I however trust it will meet with the careful consideration of His Excellency the Viceroy and Governor General of India in Council, although submitted at a stage when the opinions from all places might have been received, and that when the question is to be reopened in the Council.

This time the delay is partly attributable to the non-receipt of the Bill and partly on account of the ignorance of the rules of business of the Legislative Council. In future, if the Bills and other measures requiring the views of Associations, &c., will reach us in time, timely they will be responded to.

(Signed) LAKSHMÍ NÁRÁYANA.

To His Excellency the VICEROY and GOVERNOR GENERAL of INDIA in
COUNCIL.

MAY IT PLEASE YOUR EXCELLENCY,—

WE, the members of the Kayastha Literary and National Association, Ajmer, have much pleasure to see the concessions allowed to the Associations and newspapers of expressing opinions on the Bills of the Legislative Council, inasmuch as that no Act or Bill will have the force of law until it has undergone the criticism of the press and the outside public. Your Excellency has opened the door of liberty, and of a free voice, for the Native Associations and the press, for which policy your Excellency's epoch of Viceroyalty shall be ever marked.

Far from describing in details the wise policy of your Excellency, displayed in the exercise of powers vested by the Statutes in your Excellency's self, we beg the liberty to express our humble opinion on the "Jurisdiction Bill," a Bill on the anvil of the Legislative Council, and on which this Association, as in duty bound, craves permission to offer its humble remarks, as the Bill is one of the series affecting the nation, and of a nature in which any premature proposal would have the effect of poison in behalf of the nation affected by it.

Before expressing our opinion, we beg to thank your Excellency for the deserving privilege proposed to be allowed to Native Magistrates of India.

The aims in view of the Legislative Council while considering this question in 1872 (when the Act X. of 1872 was passed) must have been quite different from those now urged by many of the learned and honourable members of the Legislative Council.

The laws and constitutions by which we are governed are just, inasmuch as the attention is bestowed to the laws by which the Hindús and Muhamadans, and all other constituents of the population of India, are affected. Complaints of such a nature, though they may be right in a very few instances, are not substantial, for the Legislature has done very well to model the laws affecting the nations of India very much after the different creeds they belong to. In the present Bill under review there is no serious wrong done of the nature enumerated above, as long as it does not tamper with the caste or creed of a nation.

As far as we can form our opinion in this behalf, we cannot but say that it is a question of settling mutual position of the Natives and Europeans with regard to jurisdiction. The British Government, while dealing with the Natives of India, had always kept in view the sentiments of a wise Government, restricting herself to the bonds of justice far from using the means and manners adopted by the despotic Government. Hence it is incumbent upon us to thank the Government with all these beauties.

In other words, the question, as it stands, may be thus worded:—

I. Whether the Section 443 of Criminal Procedure Code, which prohibits the Natives to try Europeans, is one requiring amendment, and, if so, for what reasons.

As far as our conception goes, we know that this question was not thought of much value when considering the question of jurisdiction in 1859, and even later till 1872, when the Government of India was justified in maintaining this restriction for some political administrative convenience.

In 1882, ten years after, your Excellency, a member of the Liberal party, having terminated the troublesome war with Afghanistan, directed your Excellency's attention to carry out internal policy of the Indian Empire. Among other points affecting the Natives of India, the point of jurisdiction is one which has been a topic of the day, and the European British subjects, for some reasons which we shall state hereafter, do not like to see that criminal jurisdiction exercised over them by the Natives which they have up to this time reserved for themselves. Your Excellency most judiciously wishes to poise the scales of justice so that the matter may not tremble in the balance.

II. The opponents of the Bill urge that the Natives of India are not so disciplined or drilled in law as to exercise this jurisdiction. Your Excellency will kindly think how weak their argument is. The Natives have to pass examination after examination of the bar in India as well as in England, whence they return as barristers-at-law and civil servants, and then proceeding from the minor civil offices gradually rise to the offices of the Judges of the first class and the Magistrates of the district, and thus gaining experience in the civil line, and we cannot possibly know what further drill they are in want of.

III. They urge also that the European British subjects, being the conquerors, should not in any way subject themselves to be tried by the Natives (the conquered).

As far as our position is contrasted in respect of the conquered, we cordially admit the Europeans to be the conquerors, but there is no law so binding upon them as not to be tried by the conquered, when in civil matters they are already tried before the Native Judges, for then it shows that the feeling of the conquerors should be antipathical with the conquered. But this they do not display when being tried by the Natives in civil cases, and admit the decisions to be just. Therefore, this plea of theirs also carries no weight with it, because it is a question of race distinction which is very widely marked in many other respects.

IV. They plead again that the Native Judges will pass heavy sentences in behalf of the Europeans when tried by them in the criminal tribunals.

Your Excellency will be pleased to hear that this defence of theirs stands as an indirect proof that the Natives are not judicious and wise in imparting

justice, while the honour of many Judges is established contrary to the defence.

The motive for straying from the path of justice, they urge, is not substantial in itself. They say that the Natives seeing this jurisdiction vested in them will either exercise it to the fullest extent the section of the Code will allow, or to the lowest, that the accused may not have time sufficient to admit of an appeal to the higher authorities. This is in no way less than censuring the justice done at the hands of the Native Judges. For if the accused find that the sentence is heavy he has his option to appeal to the higher authorities to get the sentence reduced or quashed, or if he is ordered the slightest or insignificant sentence he will have to abide the consequence.

V. They urge again that the Natives do not know how to behave with the Europeans in their dealings; it is difficult to impart justice, in case they are ignorant of the manners and custom.

This plea has some essence of truth in itself, but still it should be judged with the grains of allowance; and we think we might prove the proposition in an indirect form. The Europeans have even very little acquaintance in dealings with the Natives, for every year several civil servants come from England to fill up the existing vacancies in the civil administration of the Indian Empire. What can such recruits (who commence to do justice from the date of taking over charge) know of the Natives, with regard to their dealings, manners, &c.? But their decisions, with few exceptions, are always just. What are they guided by? By the standard library of laws and constitutions governing the State. In the first instance, they are not alive to the dealings, manners, and customs of the Natives; but gradually as they come in contact with them they become conversant with the manners, &c.

Now, if we look to the Natives we can say that the same theory will hold good in respect to them, that is, the more in contact they will come with the Europeans the more they will know of their manners and customs, and, therefore, while considering the cases by law, they will not lose sight of their manners and customs, which claim ranks almost next to law.

VI. They urge that the Natives have some such privileges which the Europeans in India have not. They may briefly be,—

- (1.) The Native (*parda nishin*) women are protected from being called before the bar, on the plea of their not appearing in public.
- (2.) Several rich personages are often not called before the bar for the reason of their being high personages.

While the Natives enjoy the privileges which the Europeans cannot dream of, they urge that it is justifiable that this right of jurisdiction for trying the Europeans may be left to the Europeans only.

In the first instance, the parallel does not at all seem to have been justly drawn between the two rights contrasted. The Europeans could have well claimed the right of exempting their women from being brought before the bar had their women been not appearing in public. This would, therefore, have been a proper relief that the Europeans would have sought for.

VII. They urge that the Natives treat their women, and hold them in a position, quite different from the Europeans; if they are guided by the same feelings in deciding cases of European ladies, there is every probability of some injustice being done in their behalf.

This is again the same question which relates to the manners and customs, &c., and the same answer is equally applicable in this respect.

The Europeans have some privileges peculiar to their race, such as the mode of trial, the right of appeal, and the right to apply for release from custody. But we see that any Presidency Magistrate, whether a Native of India or not, can try or commit for trial any European British subject, and can pass any of the following sentences:—

- (1.) Imprisonment for a term not exceeding two years, including solitary confinement.
- (2.) Fine not exceeding Rs. 1,000.
- (3.) Whipping.

These are the powers which the Presidency Magistrates at the present day

enjoy. So far in the criminal jurisdiction; let us see what penalties they are authorized to levy on the European British subjects in their capacity of Civil Judges.

A Native Judge may exercise that jurisdiction in such a way as to affect, not only his property, but his reputation and his person, that is to say, he can give judgment against him in a suit for fraud or libel, can send him to prison for debt, can punish him for contempt of Court, and can issue a warrant of arrest in case of his non-attendance in a case. So that we might safely conclude that the Natives have powers over European British subjects.

These powers are far superior to the criminal powers already vested in them.

Summarising the whole, we see that Natives sitting on the High Court Bench and the Presidency Magistrates can exercise powers over European British subjects without any restriction of race or blood, and again there are similar criminal powers vested in the Civil Judges which they can exercise in the capacity of Civil Judges, so that we cannot deny that the Natives have criminal jurisdiction in very many respects, but what the Europeans are afraid of is that the Native Judges are not discreet enough to judge the nature of offence the Europeans may commit, and so they will pass sentences too heavy to bear out the charge which the intellectual European Judges will obviate. In cases where any European and an ayah are the parties, and are being tried before a European Magistrate on any serious charge, the poor ayah, though she may be right in her defence, is surely to be condemned to some severe sentence. But, if the Natives are to try similar cases, they are sure to give proper consideration to the matter, and will pass sentence in behalf of one who will be the real culprit, irrespective of a European or a Native.

But the Europeans are sure to blame the Native Judges just in the same way as the many Natives do, at the present day, blame the Europeans in the cases of ayahs and coolies whom the doctors certify to be suffering from spleen, &c.

It is often seen with regret that a general complaint is heard of in such cases, where the Europeans and Natives are parties to the suit, and we beg humbly and respectfully to suggest that such cases may be made triable by the Native Judges who, by virtue of progress of education, of the gradual adoption among the better classes of Natives of India of European standard of honour, of integrity and truthfulness, of the increase of intelligent interest in the public affairs exhibited by the leaders of Native society, are quite fit persons to enjoy the rights.

This broad policy was laid down by Parliament so long ago as 1853, that no Native shall, by reason of his religion, place of birth, or colour, be disabled from holding any office, and Her Majesty's gracious Proclamation in 1858 announced her will that, "as far as may be, 'Our subjects,' of whatever race or creed, be impartially admitted to offices in Our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge."

The opponents of the Bill urge that the caste system has thus bound the Hindús, say Bráhmans, that they have never crossed the sea, never undertaken a voyage, and they cannot know the naval terms, and cannot, therefore, better understand the quarrel of a captain and a seaman, and it is, therefore, useless to give this jurisdiction in the absence of the required qualifications.

We may be allowed to urge, in defence, that the Natives are ignorant of the English knowledge in the first instance. How do they acquire the difficult language? By steady perseverance, and by extreme pains in course of years. Very well, when the Natives are so very industrious, intelligent, is it impossible for them to be cognizant of a few naval terms? We think that this objection is not valid.

Some of the papers have urged in opposition that the Native Uncovenanted Magistrates, such as Deputy Magistrates who do not know English, cannot be expected to understand the quarrel that might have arisen in the English theatres, partly for want of English knowledge, and especially for want of knowledge of the technicalities and the customs.

We may be allowed to argue, in defence, that this case is one in which strict intimacy of customs, &c., is necessarily required, but it is not such that it cannot be remedied. Many of our European Judges are (we beg the indulgence to represent) ignorant of Urdú, not understanding a bit of it, yet they decide cases, and in most cases on the principles of the English law and equity.

But the journalist goes on to protest that to whom can the Native Magistrate turn when he has an Englishman brought before him, when, for the Englishmen, their Munshís or Anglo-Indian clerks can themselves, or through other agency, obtain the required information. We can urge here that the Natives, if it would be impracticable to detect the nature of the quarrel, will appoint Englishmen Commissioners in the case, as the Englishmen in very many cases refer cases to kázís and pandits, &c., or other proper authorities in a case.

English Judges can never frame an imagination of our domestic quarrel between a mother-in-law and a daughter-in-law unless they are aided or made to understand the case. So we find that the Europeans, too, are in these circumstances no better Judges why the blame should be imputed to the Uncovenanted Civil Service Deputy Magistrates.

In or after 1857, when the Native Judges were gifted with the high civil offices, the Europeans had prophesied that the Judges will not prove to the point, and your Excellency will be pleased to observe how their prophecy has proved false. Your Excellency may now safely believe the Native Judges to be the proper persons for this criminal jurisdiction, for even, as at the present day, there is a voice of warmth in its opposition, but this test will clearly establish the honour of the Natives, which their opponents at the present day try their best to exonerate in the eyes of the public as well as of the Government. We moreover think that the administrative convenience also justifies this demand, the attention to the claim is the duty of the Government to bestow.

Our brother Native Judges in Ceylon, a colony of the home-governing Government, have very well established their honour in the exercise of this jurisdiction over the Europeans, and your Excellency may well conceive the same in our behalf, for all our circumstances in very many instances are alike theirs, and this may be safely urged in our defence as a reasonable argument against the opposition.

(Signed) PUNNA LALL, President.
PRATAP MALL, Vice-President.
LAKSHMÍ NÁRÁYANA. Secretary.

Ajmer, the 9th November 1883.

(d)

TELEGRAM from Honourable RAO SAHEB V. N. MANDLIK, Chairman of Committee of Bombay Branch, East India Association, to SECRETARY to GOVERNMENT of INDIA (Legislative Department), dated 7th December 1883:

I AM requested, as Chairman of the Committee of the Bombay Branch of the East India Association, as also by most of the leading members of the great meeting of the citizens of Bombay, held in the Town Hall in connection with the Criminal Procedure Amendment Bill, to draw the attention of His Excellency the Viceroy in Council to the great uneasiness, deepening into alarm, at the persistent reiteration by the opponents of the Bill that the Natives are rightly, and should be permanently, in a position of inferiority and disability in respect to a class of European residents, especially in Bengal, who claim to occupy a position of caste supremacy hitherto repudiated by Parliaments and successive Administrations; that the House of Commons declared in the most solemn manner fifty years since that no Native of India should be debarred from any office by reason of colour,

creed, or caste; but that now it is expressly claimed that the judicial offices held by Natives shall be shorn of their full prerogatives in deference to the prejudices and conjured-up fears of a certain small minority of Europeans; that this pretension, if admitted, would be more grievous and discouraging, because from political motives all Her Majesty's Native subjects are excluded from military commands and from responsible political offices. If the rule be laid down that they can never exercise the full powers of judicial office, it is idle to hope that those few Natives now admitted to the Civil Service of the Crown will ever be selected for posts the duties of which they can only perform in part; and thus all honourable official careers will be in effect closed against the Native subjects of Her Majesty. The citizens of Bombay and the people of India place full reliance on the wisdom and statesmanship of His Excellency and the other members of the Government of India in all things, and trust that they will stand between them and the calamitous principles which the opponents of the Bill seek to enforce to their detriment. We express the general opinion of our countrymen in saying that they are quite willing to accept in good faith modifications in the Bill on matters of detail; but, while modifications of detail are possibly advisable, the question of principle underlying the Bill is vital, and the Government of India, it is humbly but most urgently submitted, cannot abandon it without creating widespread despondency and even alarm to the whole Native community. By safeguarding that principle, which has been challenged with unheard of violence and complete disregard of maxims of government which appeared to be beyond question, the Government of India will tranquillize the public mind, and establish on the firmest basis the confidence of the loyal population of India in the firmness and impartiality of the Administration to whose care Her Most Gracious Majesty has confided it.

(e)

From PRESIDENT, Murshidábád Association, Berhampur, to SECRETARY to GOVERNMENT of INDIA (Legislative Department), dated 10th December 1883.

I AM directed by the Murshidábád Association to submit, for the kind consideration of His Excellency the Viceroy and Governor General, the following Resolution passed at a public meeting of the inhabitants of Berhampur, held at the instance of the Murshidábád Association, on the 9th December last :—

“ This meeting begs to accord its firm support to Mr. Ilbert's Bill, and to express the hope that it will soon be passed into law, as affording a practical proof of the settled policy of the Government of India to give effect to the principles laid down in the gracious Proclamation of the Queen, and which have received the solemn and deliberate sanction of the English Parliament.”

(Signed) SHAMA CHURN BHATTA.

(f)

From HONORARY SECRETARY, Areadaha, Dackineshwar, &c., Ratepayers' Association, to PRIVATE SECRETARY to His Excellency the VICEROY and GOVERNOR GENERAL of INDIA (dated 11th December 1883).

I AM desired most respectfully to submit, for the information of His Excellency the Viceroy and Governor General of India, a copy of the Resolutions passed at a numerously attended general meeting of the inhabi-

tants of Areadaha, Dackineshwar, and Kamarhatty, held on Sunday, the 9th December 1883, at 4.30 p.m., in the compound of the Dackineshwar Vernacular School.

(Signed) PÚRN CHANDRÁ SARKÁR.

RESOLUTIONS.

THIS meeting begs to accord its firm support to Mr. Ilbert's Bill, and to express the hope that it will soon be passed into law, as affording a practical proof of the settled policy of the Government of India to give effect to the principles laid down in the gracious Proclamation of the Queen, and which have received the solemn and deliberate sanction of the English Parliament.

Proposed by Bábú Khetra Mohon Chattarjí, landlord.
Seconded by Bábú Nobin Chandra Neogy, merchant.

That a copy of the foregoing Resolution be forwarded to His Excellency the Viceroy, under the signature of the Chairman of this meeting.

Proposed by Bábú Ram Chandrá Goshal, landlord.
Seconded by Bábú Rashvehary Chattarjí.

(Signed) KRISNA KAMAL NAYARATNA,
Chairman of the Meeting.

Areadaha, &c., Ratepayers' Association,
The 9th December 1883.

(g)

RESOLUTIONS.

THAT the Halisahar Goodwill Fraternity beg to submit to the Government of India that the Bill called the Criminal Procedure Amendment Bill is a necessary one; that the withdrawal of the Bill, or even any further modifications of it than what has already been proposed for the purpose of satisfying the groundless discontent of the Anglo-Indian Committee, will be looked upon as a serious evil, as calculated to affect seriously the good government of India. It expresses a hope that this Bill will soon be passed into law in its present form, affording a practical proof of the policy of the Government of India, and of the British Parliament, to give effect to the noble principles of the gracious Proclamation of the Queen, the Magna Charta of the Indian people.

Proposed by Bábú Joygopal Gángulí, Municipal Commissioner.
Seconded by Bábú Peary Mohun Banarjí.

That a copy of the foregoing Resolution be forwarded to His Excellency the Viceroy, under the signature of the Chairman of this meeting.

Proposed by Bacharam Gupta.
Seconded by Jogendronath Gángulí.

(Signed) GOPAL CHUNDER BANARJÍ,
Chairman.

Halisahar,
The 9th December 1883.

(h)

From SECRETARY, Bardwán Association, to PRIVATE SECRETARY to His Excellency the VICEROY and GOVERNOR GENERAL of INDIA (dated 16th December 1883).

I HAVE the honour most respectfully to solicit the favour of your laying before His Excellency the following Resolutions, unanimously adopted at an influential and well attended meeting of the inhabitants of district Bardwán, held on the 9th instant, on the subject of the Criminal Procedure Code Amendment Bill now pending before His Excellency's Legislative Council. The Resolutions were as follows :—

- (1.) That this meeting are unanimously of opinion that the Criminal Procedure Code Amendment Bill, now pending before the Supreme Legislative Council of India, is a measure of urgent necessity, dictated by cogent reasons of justice and expediency, and in thorough accordance with the principles laid down by the Supreme Parliament in the gracious Proclamation of Her Majesty the Queen-Empress of India.
- (2.) That the heartfelt thanks of this meeting be conveyed to His Excellency the Viceroy for his noble and earnest desire to give practical effect to the aforesaid principles.
- (3.) That the Secretary to the Bardwán Association be requested to send to His Excellency a copy of the foregoing Resolutions.

(Signed) , SAJANI KANT CHATTERJEA.

(i)

From CHAIRMAN, MANAGING COMMITTEE, and SECRETARY, Púna Sarvajanic Sabhá, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (No. 292, dated 19th December 1883).

IN May last, the Púna Sarvajanic Sabhá forwarded a memorial from the Native inhabitants of the city and cantonment of Púna, praying that the Criminal Jurisdiction Amendment Bill (No. 8 of 1883) may be passed into law without any compromise of the principle on which it was based.

2. The opposition which the measure has met with from what may be called the Anglo-Indian party here and in England has induced the Government of India to limit the scope of the Bill to the District Magistrates and District Judges.

3. The opponents of the Bill are, however, not satisfied with this important measure of success, and they have now been endeavouring to obtain the exclusion of the Native members of the Civil Service nominated and appointed in India under the statutory rules sanctioned by Parliament, and thereby frustrate almost entirely the very object of the proposed legislation.

4. The compromise proposed by the Government of India already curtails the reform originally proposed to such an extent as to continue in force the race disability of the great body of the Native Magistracy as regards the trial of the British-born subjects. That compromise would, however, be gratefully accepted by the Natives of India simply because they have the fullest possible confidence in His Excellency the present Viceroy, feeling as they do, with a rare unanimity, that His Excellency would not have adopted it, involving, as it does, great injustice to the great majority of the Native Magistracy, had it been possible for him to grant the fuller measure of justice which was originally proposed.

5. The Púna Sarvajanic Sabhá, therefore, begs earnestly to represent that any further concession, having for its object the exclusion of the nominated Native civilians, would be viewed by the Native public as an unmistakeable sign of change of policy, under which the high principles of justice and political morality which have hitherto guided the British rule in India are henceforth to yield to the pride and prejudices of the extreme anti-Native section of the British-born sojourners in India.

6. The Sabhá, therefore, trusts that, under the just and firm rule of England, the narrow-minded though clamorous, and unfortunately partially successful, opposition to the measure in question will not be allowed to succeed in robbing the compromise now proposed by Government of all its practical usefulness.

7. It is useless to allude here to the arguments of the opponents, based on alleged race inferiority and similar prejudices and misrepresentations. These have been effectually answered officially in and out of the Legislative Council. But the Sabhá begs to state that the system under which one sixth of the members of the Covenanted Civil Service are to be recruited by nomination of Native gentlemen in India was neither asked for nor approved by the Natives of India, who have always prayed for justice and no favour. All they have earnestly and repeatedly asked for is that the limit of age might be increased, and examinations might be held simultaneously here and in England for a certain defined proportion of the annual vacancies to be openly and freely competed for by European and Native candidates respectively. If the latest phase of the opposition to the Bill as regards the nominated Civilians leads to some such improvement of the present system of selection, the opponents will deserve the thanks of the Natives.

8. But the Sabhá begs to point out that the nominated Native Civilians possess a legal right, secured to them by rules passed under statute of Parliament, to rise to all the offices, including District Magistrates and Judges, to which the other members of the Covenanted Civil Service are held eligible, and their exclusion from the operation of the proposed law will amount to a direct breach of contract with them. Those who dilate upon the alleged inferiority of the educational standard and other objectionable circumstances attending their nomination forget that their promotion to offices of District Magistrates and Judges depends on their proved fitness in every respect for those high positions, and, in cases where such inferiority may be found to exist, there need be no doubt that the fact will, of certainty, operate against any such promotion; but, in cases of happier selections, the contrary result must be expected and provided for. Besides, the function of making appointments is one of the prerogatives of the Crown or the Executive, who are and have to be already trusted to perform that function with due discretion. It is, therefore, hardly within the power of the Legislature to make such an arbitrary distinction between the members of the same branch of service as the opponents contend for. The Sabhá, therefore, trusts that this last ground of opposition will carry its own condemnation along with it.

(Signed) KRISHNAJEE LUXMUN NULKUR.
SHIVRAM HARY SATHE.

(j)

From PRESIDENT, People's Association, Sulkia, to PRIVATE SECRETARY to His Excellency the VICEROY and GOVERNOR GENERAL of INDIA.—
(No. 52, dated 22nd December 1883.)

I HAVE the honour to solicit the favour of your submitting before His Excellency the Viceroy the accompanying Resolutions passed in a public meeting of the inhabitants of Sulkia and its vicinity, held on the 9th December 1883.

(Signed) UPENDRO CHANDRA MITRA.

RESOLUTIONS.

THAT this meeting of the inhabitants of Sulkia desires, to accord its firm support to the Ilbert Bill, and to express the hope that it will soon be passed into law, as indicating the firm resolution of the Government of India to give effect to the principles contained in the gracious Proclamation of the Queen.

Proposed by Bábú Bhyrub Chunder Dutt.

Seconded by Bábú Chunder Madhub Mukerjī.

THAT a copy of the foregoing Resolution be forwarded to His Excellency the Viceroy, under signature of the Chairman of this meeting.

Proposed by Bábú Aukhoy Coomar Chátterjī.

Seconded by Bábú Bamon Dass Bhadoory.

(Signed) UPENDRO CHANDRA MITRA, President.

(k)

From OFFICIATING REGISTRAR, High Court, Calcutta, to SECRETARY to GOVERNMENT of INDIA, Legislative Department,—(No. 1964, dated 28th December 1883.)

I AM directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a Minute, recorded by Mr. Justice Field, on the Bill to amend the Code of Criminal Procedure, so far as it relates to the exercise of jurisdiction over European British subjects.

(Signed) C. A. WILKINS.

MINUTE by The Honourable Mr. Justice FIELD on a Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of Jurisdiction over European British Subjects.

Section 1. I was not in India when the Registrar's Letter No. 866 of the 23rd May last was sent to the Secretary to the Government of India, in reply to his No. 16C. of the 16th March last; and I therefore had not an opportunity of communicating my opinion as to the measure upon which the Judges of this Court were invited by the Government of India to express their sentiments. Having now returned to the country, I take the present opportunity of stating my individual opinion. I cannot regret a delay personal to myself, inasmuch as it has given me an opportunity of knowing and considering the views and arguments which have been advanced on either side of the important question raised and discussed with so much earnestness and ability not only in India but also in England.

Section 2. In this as in other cases of legislation, I think that light for guidance in the future may be obtained from a review and examination of what has been done in the past; and I therefore propose to give a brief summary of the administration of criminal justice in the Bengal Presidency from the commencement of British authority in the country up to the present time.

Section 3. The earliest provision for the administration of justice is to be found in the Charter granted by Charles II. to the old Company on the 3rd April 1661, which empowered the Governor and Company of Merchants of London trading in the East Indies to appoint Governors and other officers to govern their factories, and provided that the Governor and Council of the several places where the Company had factories or places of trade within the East Indies should have the power to judge all persons belonging to the said Governor and Company or living under them, in all cases, whether civil or criminal, "according to the laws of this kingdom," i.e., Great Britain. Nine years later, when Bombay was made over to the Company, power was given to make laws for that Presidency, and to enforce them by *punishments*, such laws and punishments being "consonant to reason and not repugnant or "contrary, but as near as may be agreeable, to the laws of England."

Section 4. On the 24th of September 1726, George I., by letters patent, established the Mayors' Courts at the three Presidencies; and the Governors of the Presidencies, and certain Members of Council, were then appointed Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery. In 1774, the Mayor's Court at Calcutta was superseded by the Supreme Court, established by letters patent from the Crown, under the authority of

Supreme Court established, 13 Geo. III., cap. 63, 1774.

13 Geo. III., cap. 63. By the 14th section of this statute, the Supreme Court was vested with full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes, misdemeanours, or oppressions committed or to be committed; and by the 34th section it was enacted that all offences and misdemeanours which should be tried in the said Court should be tried by a *jury of British subjects* resident in the town of Calcutta, and not otherwise. By the 38th section the Governor General in Council, the Chief Justice, and the other Judges of the Supreme Court were declared to be Justices of the Peace of the aforesaid settlement, and for the several settlements and factories subordinate thereto, and they were authorized and empowered to hold Quarter Sessions four times a year. By the letters patent dated the 26th March 1774, the Chief Justice and the Judges were appointed Justices and Conservators of the Peace and Coroners within and throughout Bengal, Behar, and Orissa, and every part of those Provinces.

Section 5. In 1781 was passed the 21 Geo. III., cap. 70, which contains certain provisions evincing that consideration for the personal laws and customs of the inhabitants of India which has characterised British rule since its commencement. Section 17 provided that cases of inheritance and succession to lands, rents, goods, and all matters of contracts should be determined, as between Mahomedans by the laws and usages of the Mahomedans, and as between Gentoos by the laws and usages of the Gentoos; and that, where only one of the parties was a Mahomedan or a Gento, by the laws and usages of the Defendant. Section 18 maintained the rights and authorities of fathers and masters of families under Gento or Mahomedan law, and provided that no act done in consequence of any rule of caste should be deemed a crime, although the same might not be justifiable by the laws of England. Section 19 directed the Supreme Court to frame such processes, rules and orders in suits, civil or criminal, as might accord with the religion and manners of the Natives, being at the same time consistent with the due execution of the laws and the attainment of justice. The 23rd section gave the Governor General in Council power to frame regulations for the Provincial Courts.

Great consideration for ideas and customs of the Natives.

Section 6. The next important statute is 26 Geo. III., cap. 57, Section 29 of which enacted that both the servants of the Company and all other of His Majesty's subjects resident in India should be amenable to the Courts of Oyer

26 Geo. III., cap. 57, 1786.

and Terminer and Gaol Delivery, and the Courts of General or Quarter Sessions of the Peace in any of the British settlements in India for offences committed beyond the Cape of Good Hope and the Straits of Magellan within the limits of the exclusive trade of the Company. In 1793 was passed the

Covenanted servants appointed Justices of the Peace, 1793.

33 Geo. III., cap. 52, Section 151 of which empowered the Governor General in Council of Fort William to appoint as many of the Covenanted Officers of the Company or *other British inhabitants* as he thought properly qualified to act as Justices of the Peace within the Province and Presidency and the places subordinate thereto. This brings us down to the year of Lord Cornwallis' Code, and it will now be convenient to see what arrangements had been made up to that time for the administration of criminal justice in the Mofussil, that is, in the country outside the local limits of the Presidency town.

Section 7. Under the Mahomedan Government capital cases were tried by the Nazim. The Darogha-Adalat-al-Alia, or Deputy of the Nazim in the Criminal Court, had cognizance of quarrels, frays, and abuse. The Faujdari, or Officer of Police, had jurisdiction in all crimes not capital. To him was subordinate the Kotwal, or Peace Officer of the Night. The law was

Administration of criminal justice under Mahomedan rule.

expounded by the Kazi and the Mufti. In parts of the country away from the seat of Government, justice was administered by the officers of Government with regard rather to their own interests than the ends of justice. In the Report of the Committee of Secrecy of 1773, we find the following observation :—"The subjects of the Mogul Empire derived little protection or security from any of these Courts ; and in general, though forms of judicature were established and preserved, the despotic principles of the Government rendered them the instruments of power rather than of justice, not only unavailing to protect the public, but often the means of most grievous oppressions under the cloak of the judicial character." The Committee further stated it to be the general opinion "that the administration of justice during the vigour of the ancient constitution was liable to great abuse and oppression ; that the Judges generally lay under the influence of interest, and often under that of corruption ; and that the interposition of Government, from motives of favour and displeasure, was another frequent cause of the perversion of justice." Such is by no means an exaggerated description of the state of things which British rule found in this country, and for which in the course of a century a system of law and order and protection of property has been gradually substituted. Let us briefly trace the measures by which this beneficial change has been brought about.

Section 8. On the 15th August 1772, a Foujdari or Criminal Court was established for each provincial division.

Early measures under British rule for the administration of criminal justice.

A Kazi and a Mufti and two Múlvies sat in this Court to expound the Mahomedan law, and determine how far accused persons were guilty of its violation ; but it was made the Collector's duty to see that the proceedings were regular, and the decision fair and impartial. An appeal lay from this tribunal to the Nizamat Adalat, which then consisted of a Chief Officer, appointed on the part of the Nawab Nazim, a head Kazi and Mufti, and three eminent Múlvies, its proceedings being subject to the control of the President and Council.

Section 9. It may here be noticed that under another Regulation of this year (1772), all civil suits regarding inheritance, marriage, caste, and other

Reservation of personal law of Hindoos and Mahomedans.

religious usages or institutions were to be determined according to the laws of the Koran with respect to Mahomedans, and those of the Shasters with respect to Gentoos, it being, as has already been observed, the policy of the Government to preserve the personal laws of the different races in India.

Section 10. In 1774 the Nizamat Adalat was moved from Calcutta to Murshedabad, and Mahomed Reza Khan was vested with authority to super-

intend the Faujdári Courts and the administration of criminal justice throughout the country. The administration of criminal justice continued

1774 to 1787. Administration of criminal justice conducted in the name of the Nawab Nazim.

to be conducted in the name of the Nawáb Názim, subject, however, to the control of the Company's Government.

In 1781 the Faujdárs of 1774 were abolished, and the Judges of the Civil Courts were, as Magistrates, invested with the power of apprehending offenders. They had, however, no jurisdiction to try or punish such persons, but were bound to send them immediately to the nearest Faujdári Court. In 1787 the offices of Judge, Magistrate, and Collector were united in the same person, who as Magistrate was empowered to hear and decide petty cases, other offenders being forwarded to be dealt with by the Mahomedan officers of the Nawáb.

Section 11. In 1790, it was found that the administration of criminal justice was wholly inefficient, and therefore the Nizámat Adálat was moved

1790. Administration of criminal justice taken into the hands of the British Government.

back from Murshedabad to Calcutta, and it was made thenceforth to consist

of the Governor General and the Members of Council, assisted by the head Kázi and two Muftis. The Court so constituted was to exercise all the powers formerly vested in the Nawáb Názim. At the same time four Courts

Courts of Circuit established.

of Circuit, each presided over by two Covenanted Civil Servants assisted by

a Kazi and Mufti, were established. The Judges were to make two circuits; and two gaol deliveries were to be held every year in each of their districts. The Judges of the Civil Courts still acted as Magistrates, being bound to commit all offenders to the Courts of Circuit, except in petty cases, such as abusive language and inconsiderable assaults or affrays, in respect of which they were vested with authority to try and punish with corporal punishment not exceeding 15 rattans, or imprisonment not exceeding 15 days.

Section 12. We now come to the Code of 1793. Under the provisions of

The Code of 1793.

Section 2 of Regulation IX. of that year, the Judges of the Civil Courts in

the zillahs or districts and in the cities of Patna, Dacca, and Murshedabad were to hold the office of Magistrate. They were authorized to hear and determine petty cases, and were empowered to punish with 15 days' imprisonment or a fine for abusive language and inconsiderable assaults or affrays, and with corporal punishment not exceeding 30 rattans, or one month's imprisonment, for petty thefts. Section 19 of the same Regulation recited that European British subjects were amenable only to the Supreme Court, and gave Magistrates jurisdiction to inquire into charges against such persons, and, if satisfied that there were sufficient grounds for committing, to convey them under safe custody to one of the Judges of the Supreme Court, who alone at that time had jurisdiction to commit for trial. The Magistrates, it will be observed, were Covenanted Civilians and European subjects. The same section provided that all Europeans, not British subjects, were amenable equally with Natives to the authority of the Magistrates and the Courts of Circuit. In the case of offences by Natives, other than those in respect of which the Magistrate was vested with a petty jurisdiction to punish, the offenders were to be committed to the Courts of Circuit.

Section 13. Section 15 of Regulation IV. of 1793 re-enacted the provisions of 1772, already noticed (*ante* Section 9), by which Mahomedans and

Personal law of Hindoos and Mahomedans preserved.

Hindbos were enabled to retain their

personal law.

Section 14. In 1801 the Governor General ceased to be a Member of the Court of Nizámat Adálat, which thence-

Governor General ceased to be a Member of the Nizamat Adalat in 1801.

forth was to consist of three Judges, the chief of whom was to be one of the

Members of the Supreme Council, while the other two were to be appointed from among the Covenanted Civil Servants not being Members of Council.

Section 15. Regulation II. of 1796 recited the 21 Geo. III., cap. 65,

Zillah and City Magistrates- appointed Justices of the Peace, 1796.

which empowered the Governor General in Council, by commission under the seal of the Supreme Court, to appoint Covenanted servants of the Company or other British inhabitants to act as Justices of the Peace, and further recited an order of the Governor General, dated the 7th January 1794, under which the Zillah and City Magistrates were appointed to be Justices of the Peace. Before such appointment (as already explained) European British subjects could only be sent by Magistrates to be committed for trial by one of the Judges of the Supreme Court. The Regulation then provided that Zillah or City Magistrates, who had taken the oaths of qualification as Justices of the Peace, were themselves to make committals. If they had not taken the oaths of qualification, they were merely permitted to send accused European British subjects to Calcutta, to be there committed to the Supreme Court. This Regulation further provided that all European British subjects were, for acts of a criminal nature, amenable only to the Supreme Court of Judicature, and it repeated the provision of Regulation IX. of 1793, that other Europeans, not being British subjects, were equally with Natives amenable to the authority of the Magistrates and Courts of Circuit.

Section 16. Regulation XIII. of 1797 authorized Zillah and City Magistrates to employ their Assistants in the execution of such part of their duties as they could not themselves attend to,

Assistants to the Magistrates vested with judicial powers, 1797.

and the Assistants were authorized to exercise the judicial powers vested in the Magistrates by Regulation IX. of 1793, or any other Regulation, so far as might be necessary to enable them to perform the duties committed to them by the Magistrates. The powers

Powers of Zillah and City Magistrates extended.

of Zillah and City Magistrates were extended by Section 19 of Regulation IX. of 1807, which empowered them to pass sentence of imprisonment not exceeding six months, with corporal punishment not exceeding 30 rattans, in cases of theft, or in other cases with fine not exceeding Rs. 200, commutable if not paid to a further period of imprisonment not exceeding six months. These extended powers were not, however (Section 20), to be exercised by assistants, who were limited to the powers given by the previous Regulations with some slight extensions made in express terms.

Section 17. The next Regulation of importance is No. XVI. of 1810. Up to this year the offices of Judge and Magistrate were united in the same person. The Regulation just mentioned

Appointment of Joint and Assistant Magistrates, 1810.

then empowered the Governor General to appoint a person, other than the Judge of the zillah or city, to hold the office of Magistrate, and also to invest the Magistrate of any zillah or city with general concurrent authority as Joint Magistrate in any contiguous or other jurisdiction. Section 4 further provided for the appointment of an "Assistant Magistrate" in any zillah or city. This officer was subsequently termed a Joint Magistrate, and is not to be confounded with the "Assistant to the Zillah or City Magistrate," spoken of in Regulation XIII. of 1797. Section 6 of Regulation XVI. of 1810 provided that Joint and Assistant Magistrates should exercise the same powers as by the Regulations were vested in the Zillah or City Magistrates; but Section 7 further provided that the special duties to be performed by them under the powers so vested in them should be determined by the orders of Government on their respective appointments. It was further provided (Section 9) that no appeal should lie to the Magistrate from the sentences of an Assistant Magistrate or from his orders committing prisoners to the Court of Circuit, "the Assistant Magistrate being invested with the full powers of a Magistrate in all such cases within his jurisdiction."

Section 18. By Regulation VIII. of 1813, taken with Regulation V. of 1809 which it expounds, jurisdiction was given to Magistrates and Courts of Circuit in respect of offences committed

Jurisdiction for offences committed outside India, 1813.

outside the limits of the British Provinces in India over (1) natural-born subjects of the British Government in India, (2) Natives of India who had become subjects of such Government by conquest or cession of the place in which they were born, and (3) Natives of the foreign States of India in the civil or military service of the British Government in India.

Section 19. In 1813 was passed the 53 Geo. III., cap. 155. Section 105 of this statute, which has been so frequently referred to, gave to the Magistrate of the zillah or district where the offender resided, or in which the offence had been committed, jurisdiction over British subjects in cases of

1813, 53 Geo. III., cap. 155, section 105. Jurisdiction in petty cases over European subjects given to District Magistrates. Fine, and imprisonment only in case of non-payment of fine.

assault, forcible entry, or other injury accompanied with force, not being felony, and such Magistrate was empowered, in case of conviction, to inflict a fine not exceeding five hundred rupees. If no property of the offender were to be found within the district, the Magistrate might, by warrant under his hand, commit him to confinement. There has been some doubt and controversy as to whether the jurisdiction thus conferred could be exercised by a Zillah or City Magistrate who was not a Justice of the Peace. There is a Construction (No. 100) of the Nizamat Adalat (based upon an opinion of the Advocate General) to the effect that a Magistrate, or other officer exercising the full powers of a Magistrate, had jurisdiction under the section, although he had not taken the oaths of qualification as a Justice of the Peace. This view has, however, been argued not to be in accord with the further provisions of the section itself, which enacts that all such convictions shall be removable by writ of Certiorari into the Courts of Oyer and Terminer and Gaol Delivery in the same manner and upon the same terms and conditions, and shall be proceeded upon in the same manner in every respect, as is directed in 33 Geo. III., cap. 52, with regard to "*other convictions before Justices of the Peace* in the British settlements or territories in India." This language implies that the particular convictions under 53 Geo. III., cap. 155, section 105, were had before a Justice of the Peace. Section 108 of the same statute provided that British subjects allowed to reside more than ten miles from the Presidency should procure and register certificates of permission in the Court of the district where they wished to reside. It will be borne in mind that India was not at that period open to British subjects who were not in the civil or military service of the Company.

Section 20. In Regulation XVII. of 1817 we have a remarkable instance of the consideration allowed to Native laws in themselves repugnant to European ideas. The process of *godna*, or tattooing the crimes of offenders upon their foreheads, was by this enactment retained and its use regulated by express provisions. The same Regulation abolished the exemption from capital punishment which had hitherto been allowed to Brahmins. These provisions show how gradually and cautiously the British Government interfered with Native laws and customs, which were in themselves barbarous and opposed to the principles of justice.

Section 21. By Regulation XII. of 1818, the powers of the Zillah and City Magistrates were enlarged, and they were authorized to pass sentences of imprisonment not exceeding two years, and corporal punishment not exceeding thirty rattans in certain cases of burglary, theft, and receiving stolen property. In 1821 provision was made for intrusting Assistants to

Powers of Magistrates enlarged, 1818.

Special powers of Assistants to Magistrates, 1821.

Magistrates with special powers, upon the recommendation of the Nizamat Adalat. Assistants so empowered could pass sentences of imprisonment not exceeding six months, of corporal punishment not exceeding thirty rattans, and of fine not exceeding two hundred rupees, "in all cases referred to them in which an individual was convicted of any criminal offence punishable under Mahomedan law and the Regu-

Petty criminal jurisdiction of Native Law Officers, 1821.

lations." The Zillah and City Magistrates were authorized by the same Regulation to refer for trial to Hindoo

and Mahomedan Law Officers charges of abusive language, calumny, petty assaults, and petty theft, as also any criminal cases which they were empowered by the provisions of the Regulations to refer to their Assistants; and such Law Officers were authorized to exercise the same powers as were vested in Assistants to Magistrates by Section 20 of Regulation IX. of 1817. Similar provisions were made applicable to Sudder Amíns.

Section 22. Another Regulation (No. IV.), of the same year, empowered the Governor General, to authorize a Union of duties of Magistrate and Collector in the same officer, 1821. Collector to exercise the whole or any portion of the powers vested by the Regulations in Magistrates or Joint Magistrates, and to employ a Magistrate, Joint Magistrate, or an Assistant to a Magistrate in discharging the duties of a Collector. Collectors employed as Magistrates were to be guided in the execution of their duties by the Regulations, which had been or might be enacted for the guidance of those officers.

Section 23. Regulation XII. of 1825 repealed certain pre-existing provisions of law which had allowed corporal punishment to be inflicted upon females, upon persons convicted of affray, and for contempt of court in the Courts of Circuit. It was further enacted that the rattan should be substituted for the *korah* in all cases of corporal punishment. These changes in the criminal law were in accordance with the more humane views which influenced a civilized nation in the matter of punishments. Regulation VIII. of 1828, with a view to the more effectual prevention of affrays, authorized the Magistrates to pass a sentence of imprisonment not exceeding one year, and of fine not exceeding two hundred rupees, upon persons convicted of affray. Regulation VIII. of 1829 made certain provisions for bringing to trial Native British subjects charged with offences committed out of the British provinces in India.

Section 24. By Regulation I. of 1829 the criminal jurisdiction of the Courts of Circuit was transferred to Commissioners of Revenue and Circuit then newly appointed; and it was further declared competent to the Governor General in Council to direct any Judge of Appeal, or other Judge, not being a Magistrate by whom the commitments had been made, to hold sessions of gaol delivery for any city or zillah within the powers and authority of the Court of Circuit. Ten months afterwards the Governor General was further empowered to invest Zillah or City Judges with full powers to conduct the duties of the sessions (*see* Regulation VII. of 1831). The Sessions Judges so appointed had no jurisdiction to hear appeals from Magistrates. Such appeals still lay to the Commissioners, to whom the powers and authority of the Courts of Circuit had been transferred in the previous year. As the offices of Sessions Judge and Magistrate were now united in the same person, it was necessary that the appellate jurisdiction should rest elsewhere, and accordingly Commissioners were authorized by Regulation II. of 1829 to receive appeals from the decisions of the Zillah, City, and Joint Magistrates. Further, as the Sessions Judges were committing Magistrates, and therefore unable to try as Judges cases committed by themselves as Magistrates, inconvenience and obstruction in the administration of justice resulted. To remedy this difficulty, the provisions of Regulation IV. of 1821 were put into operation, and the functions of the Magistrate transferred to the Collector. Regulation VI. of 1829 empowered Magistrates and Joint Magistrates to pass a sentence not exceeding two years upon persons convicted of two or more petty thefts.

Section 25. Regulation XVII. of 1829 abolished and declared illegal and punishable the practice of suttee, or burning or burying alive the widows of Hindoos, which practice had been allowed to continue for nearly half a century after its suppression might have

been effected by British authority. This is another remarkable instance of the tenderness shown for the personal laws of the Natives of India, even though repugnant to the ideas of humanity.

Section 26. It was provided by Regulation VIII. of 1830 that Magistrates should accept evidence for the defence in cases which they were not competent to try, but could only commit to the sessions; and they were declared competent to admit accused persons to bail when there did not appear to be a reasonable probability of a conviction. The value of these benevolent provisions can scarcely be over-estimated in a country where the man who desires to avenge himself on his enemy utilizes the very powers of justice for this end, and hesitates not to get rid of his opponent, even if it be for a time merely, by casting him into jail upon a false charge, which may not be proved and may possibly be satisfactorily disproved.

Section 27. In 1835, the Governors of the Presidencies of Fort William in Bengal and Agra were empowered, by Act VII. of that year, to transfer the whole or any part of the duties connected with criminal justice from any Commissioner of Circuit to any Sessions Judge. The transfer of sessions duties from the Commissioner to the Judge, intended at first to take place only in exceptional cases, soon became usual and general, and the formality of an order signed by the Secretary under the provisions of this Act was omitted. In consequence of this omission, it became necessary many years after to ratify by an enactment of the Legislature acts done by Sessions Judges without the warrant required by law.

Section 28. I now turn to the statutes relating to India passed by Parliament. In 1826 it was enacted, by the 7 Geo. IV., cap. 37, that all persons resident in the Presidency towns of Calcutta, Madras, and Bombay, not being the subjects of foreign States, should be capable of serving as jurors on the grand and petty juries, subject, however, to any rules which the Supreme Courts might make as to their qualification and other matters. In 1832 the 2 & 3 Will. IV., cap. 117, enacted that it should be lawful for the Governor General in Council to appoint any person resident in the territories in the possession and under the Government of the East India Company, not being the subjects of foreign States, to act as Justices of the Peace within the Presidency towns; and the same statute repealed a previous statute, which had provided that the grand juries in all cases, and all juries for the trial of persons professing the Christian religion, should consist wholly of persons professing the Christian religion.

Section 29. Previous to 1833, British subjects not in the service of the Crown or Company were not allowed to reside in India at a distance of more than ten miles from a Presidency town without a license; and British subjects were not allowed to hold land in the Mofussil (*see* Regulations quoted in note 2, page 166, of my edition of the Bengal Regulations). In 1833, it was enacted by the 3 & 4 Will. IV., cap. 85, that natural-born subjects of the Crown might proceed by sea to any port or place having a custom-house establishment within the territories of the Government of India, and reside thereat, and proceed to, reside in, or pass through any part of the territories which were under the Company's Government in the year 1800, and other territories subsequently ceded, without any license whatever; provided that on their arrival in any part of such territories they made known in writing their names, place of destination, and objects of pursuit in India to the chief customs officer, or other authorized officer. Act IV. of 1837 subsequently enacted that it should be lawful for every subject of the Crown to acquire and hold in perpetuity, or for any term of years, property in land, or any emoluments issuing out of land in any part of the territories under the East India

Company, subject, however, to the rules which prescribed the manner in which such property might be acquired and held by Natives. The Governor General was also empowered by this statute of 1833, with the previous consent of the Directors, to declare any place or places open to all His Majesty's natural-born subjects, any of whom might thereupon proceed to, reside in, or pass through such place or places without any license.

Section 30. The *eighty-fifth* section of the same statute, reciting that the removal of restrictions on the intercourse of Europeans would render it necessary to provide against any mischiefs or dangers that may arise therefrom, enacted that the Governor General should by laws or regulations

Further consideration for the religions and opinions of the Natives of India. Disabilities to hold office or employment removed, 1833. provide for the protection of the Natives from insult and outrage in their persons, religions, or opinions. The

eighty-seventh section provided that no Native, nor any natural-born subject of His Majesty should, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company. In order to understand the meaning and object of this provision, it must be borne in mind that the English settlements in India were British territory governed by British law, and that it must be doubtful whether the Natives of India were not at that time aliens, and subject to the disabilities and disqualifications of aliens.* Before the 7 & 8 Vict., cap. 66 (1844), the naturalization of an alien in England could be effected only by an Act of the Legislature in each particular case; and even in such Acts the 1 Geo. I., cap. 4, required the insertion of a clause excluding the party from being a Privy Counsellor, sitting in either House of Parliament, or holding any civil or military office. Natives of India had been for many years previous to 1833 holding offices, as Judges of Civil Courts; and if it were held that as aliens they were incompetent to hold such offices, all their acts might have been void, and very serious consequences might have ensued. When the 3 & 4 Will. IV., cap. 86, was passed an important litigation,† which was afterwards carried home to the Privy Council, was going on in Calcutta, in which the question was raised whether the English law of aliens had been introduced into India. It may well have been the object, or one of the objects of the framers of that statute, to prevent the results that might have followed from the decision of this question in the affirmative by the Privy Council.

Section 31. It was enacted by Act XI. of 1836 that from the 1st June of that year no person whatever should by reason of birth, or by reason of descent, be, in any civil proceeding whatever, excepted from the jurisdiction of the Sadr Diwāni Adālat or Company's Chief Court at the Presidency or of the Civil Courts in the Districts. The passing of this Act excited considerable agitation and met with much opposition at the time. This opposition was however, directed in a great measure against extending the jurisdiction of

* At what time the British Crown acquired the sovereignty of the soil in British India, is a question of much doubt (see Westlake's Private International Law, paras. 153—155). The preamble of the 33 Geo. III., cap. 52 (1793), speaks of "territorial acquisitions obtained in the East Indies," remaining "in the possession of the Company." The preamble of the 53 Geo. III., cap. 155 (1813), recites that it is expedient that these "territorial acquisitions . . . should, without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same, remain in the possession and under the Government of the Company." The title of both these statutes speaks of "continuing in the East India Company the possession of the British territories in India." The preamble of the 3 & 4 Will. IV., cap. 85 (1833), recites that it is "expedient that the said territories now under the Government of the said Company be continued under such Government, but *in trust* for the Crown of the United Kingdom of Great Britain and Ireland." Aliens may be naturalized (1) by Parliament; (2) by Letters Patent; (3) by conquest. The effect of cession is more doubtful as to the *ante-nati*; the *post-nati*, doubtless, are entitled to all the rights of subjects. When did the Natives of India become subjects of the British Crown, and entitled to all the rights of subjects? It was, doubtless, to avoid in favour of the Natives any disability that might be involved in the answer to this question that section 87 of the 3 & 4 Will. IV., cap. 85, was passed.

† The Mayor of Lyons v. the East India Company, 1 Moo. P. C. R. 175, decided by the Supreme Court on the 23rd February 1832, and afterwards by the Privy Council in December 1836. The question here raised was whether a certain person being an alien was incapacitated from devising real property.

the Company's Courts to British subjects, who had from our first settlement in the country been subject to the jurisdiction of the King's Courts only. Section 107 of 53 Geo. III., cap. 155, had previously provided that under certain conditions and restrictions British subjects residing, or trading, or occupying immovable property at a distance of more than ten miles from the Presidency might be subject to the jurisdiction of all Courts having cognizance of civil suits or matters of revenue.

Section 32. Act XXXII. of 1838 provided that all powers whatever in criminal cases, which previously might be exercised by two Justices of the Peace for the Provinces of Bengal, Behar, and Orissa, might thereafter be exercised by one Justice of the Peace. Similar provisions were by other Acts made with respect to Justices of the Peace in the Presidency towns. Act XVI. of 1841 provided that Justices of the Peace might take the oath of office in any Civil or Criminal Court within the places for which their commission had been issued, whether the presiding officer of such Court were a Justice of the Peace or not. Act VI. of 1845 empowered the Supreme Court, upon an order of the executive Government, to issue special commissions of the peace to persons not named in the last general commission issued. Act IV. of 1843 was passed to amend the law concerning appeals from Justices of the Peace and from Magistrates acting under the 53 Geo. III., cap. 155. This Act recited that in many cases provided for by law offences might be prosecuted before Magistrates not acting within the local limits of the jurisdiction of the Supreme Court, and that such Magistrates might take cognizance of those offences in their magisterial capacity under the Regulations, or as Justices of the Peace; that appeals from Magistrates acting in their magisterial capacities and from similar convictions before Justices of the Peace were subject to different rules; and that in cases of conviction under the 53 Geo. III., cap. 155, the law as to appeals required amendment. The Act then provided that an appeal should lie from all sentences passed by any Justice of the Peace acting without the local limits of the Supreme Court and from all sentences passed by any Magistrate upon convictions had before him to the same authority, and should be subject to the same rules, as in the case of sentences passed by Magistrates in the exercise of their ordinary jurisdiction; and that cases so made the subject of appeal should not be otherwise liable to revision by means of a writ of Certiorari. These provisions appear to show that Magistrates who were not Justices of the Peace had exercised jurisdiction under the 53 Geo. III., cap. 155, and that the opinion of the Advocate General had been accepted and acted upon.

Section 33. The 3 & 4 Will. IV., cap. 85, sect. 88, had in 1833 directed the Governor General in Council to take into consideration the means of mitigating the state of slavery and of ameliorating the condition of slaves and of extinguishing slavery throughout the British territories in India, as soon as such extinction should be practicable and safe. In pursuance of this direction Act V. of 1843 was passed for declaring and amending the law regarding the condition of slavery within the territories of the East India Company. It provided

Provisions for mitigating and abolishing slavery, 1843.

that no public officer should sell in execution of a decree any person or the right to his compulsory services; that no right arising out of any alleged property in the person or services of a person as a slave should be enforced; that no alleged slave acquiring property by his own industry should be dispossessed therefrom; and that no act should be any the less a penal act on account of its being done to an alleged slave.

Section 34. In the same year (1843) Uncovenanted Officers, who were for the most part Natives of the country, were for the first time employed as Deputy Magistrates. Act XV. of 1843 enacted that it should be competent to the Local Government to appoint one

Uncovenanted Officers employed as Magistrates and Police Officers.

or more Uncovenanted Deputy Magistrates in any district; that such Deputy Magistrates should be capable of being employed as judicial officers, or as officers of police, or both, at the discretion of the Local Government; that any such Deputy Magistrate should as a judicial officer exercise the powers of a Covenanted Assistant under Regulations XIII. of 1797, IX. of 1807, or III. of 1821, or *the full powers of a Magistrate* according to such orders as might from time to time be issued in that respect by the Local Government. I have made careful search, and I have been unable to find that any general orders were at any time issued by the Government under these provisions. Individual officers were usually gazetted "as vested with the powers of an Assistant to a Magistrate under Regulations XII. of 1797 and IX. of 1807," or "to exercise the special judicial powers of Assistant Magistrates as described in Clause 3, Section 2, Regulation III. of 1821," or "to exercise the full powers of a Magistrate under Act XV. of 1843," or "to exercise the full judicial powers of a Magistrate under the provisions of Act XV. of 1843." The expressions "special powers," "full powers of a Magistrate," in the old Bengal Regulations and in the Acts have reference to the *powers of punishment* which Magistrates were authorized to exercise, not to the class of cases in which they could exercise jurisdiction. Assistant Magistrates vested with special powers were by Act XXVII. of 1845 declared competent to decide cases under Act IV. of 1840 (*i.e.*, about possession of land, water, fisheries, crops, and the like), which were referred to them by the Magistrate to whom they were subordinate. This special provision shows that Assistants to Magistrates could not under the provisions of Regulation III. of 1821 exercise any jurisdiction given to Magistrates by any Regulation passed after the Regulation of 1821. The same restriction of course applied to Deputy Magistrates gazetted to exercise the powers of Assistant Magistrates.

Section 35. Act VII. of 1853 extended the provisions of the 53 Geo. III., cap. 155, sect. 105, to cases of assault, forcible entry, or other injury accompanied with force committed in any part of India by any British subject or *other person* against any person or property of *any person whatever*. This Act was enacted because failures of justice had happened through the

inability of Natives to prove the place of birth of persons charged under the 53 Geo. III., cap. 155, sect. 105, 1853.

Statute, and because it had been held that the Statute did not apply where the offence was committed by one European subject upon another. The same Act provided that the powers in such cases given to the Magistrate of a zillah or district might be lawfully exercised by any Joint Magistrate, or other person lawfully exercising the powers of a Magistrate. Apparently, but for this express provision, Magistrates other than Zillah or District Magistrates would not have had jurisdiction in such cases. Joint and Assistant Magistrates were by Section 6, Regulation XVI. of 1810, "invested with the same powers as by the Regulations are vested in the Zillah and City Magistrates." Clearly this section gave those Magistrates only the powers created by Regulations passed previous to Regulation XVI. of 1810, and did not give powers created by subsequent Regulations.

Section 36. Act VII. of 1854 provided for the apprehension within the territories under the Government of the East India Company of persons charged with the commission of heinous offences beyond the limits of the said territories. An extradition order was to be signed by one of the

Secretaries to the Government and directed to all Magistrates and Justices of the Peace, who upon the production

of such order were declared to have the same powers as if the offence charged had been committed within their jurisdiction. By a definition clause the word "Magistrate" in the Act was declared to include a Joint Magistrate or any person lawfully exercising the powers of a Magistrate and also a Justice of the Peace.

Section 37. Act X. of 1854 recited that Assistants to Magistrates and Deputy Magistrates appointed under Act XV. of 1843 to exercise the powers

Local Government might empower Assistants and Deputy Magistrates to receive and try cases without reference by District Magistrate, 1854.

of a Covenanted Assistant under Regulations XIII. of 1797, IX. of 1807, or III. of 1821, were not competent to decide any cases but such as were referred to them by a Magistrate, and then enacted that the Local Government might empower Assistants to Magistrates and Deputy Magistrates to receive and try without reference by a Magistrate all or any of such charges as they were *then* competent to try upon reference by a Magistrate. These provisions were rendered necessary by the introduction of the sub-divisional system, an Assistant or Deputy Magistrate being often placed in charge of a sub-division. The same Act empowered Deputy Magistrates vested with special powers to decide cases under Act IV. of 1840 (*see ante*, Section 34). Act III. of 1859 conferred upon Cantonment Joint Magistrates jurisdiction in a certain class of civil cases.

Section 38. Doubts having arisen as to the substantive law under which European British subjects were punishable in certain cases, Act XVIII. of 1859 provided that when an offence declared by any previous Act to be punishable upon conviction by a Magistrate was committed by a European British subject *beyond the local limits of the jurisdiction of the Supreme Court*, the offender, if not otherwise punishable, should be liable upon conviction before the Supreme Court to the punishment to which by such Act the offender was liable upon conviction before a Magistrate. The same Act further provided that when any such offence was committed *within the local limits of the jurisdiction of any Court of judicature established by Royal Charter*, the offender, if not otherwise punishable, should be liable upon conviction before such Court to the punishment to which such Act declared him liable upon conviction before a Magistrate. The *third* section provided that nothing in the Act was to extend to any case in which jurisdiction was expressly given to a Justice of the Peace. The *fourth* section provided that when in any previous Act the word "Magistrate" was declared to include a Justice of the Peace, such Justice of the Peace was not by virtue of such Act to be deemed to have jurisdiction to punish any offence, unless it were committed *within the local limits of the jurisdiction of a Court established by Royal Charter*. The effect of this provision was that a Justice of the Peace, who was not also a local Magistrate, could not deal with such offences in the Mofussil or outside the Presidency towns.

British subjects, how punishable for certain offences committed in the Mofussil, 1859.

And for offences committed within the jurisdiction of Charter Courts.

liable upon conviction before a Magistrate.

The *third* section provided that nothing in the Act was to extend to any case in which jurisdiction was expressly given to a Justice of the Peace. The *fourth* section provided that when in any previous Act the word "Magistrate" was declared to include a Justice of the Peace, such Justice of the Peace was not by virtue of such Act to be deemed to have jurisdiction to punish any offence, unless it were committed *within the local limits of the jurisdiction of a Court established by Royal Charter*. The effect of this provision was that a Justice of the Peace, who was not also a local Magistrate, could not deal with such offences in the Mofussil or outside the Presidency towns.

Section 39. I shall now notice a certain class of cases in which a limited jurisdiction over European British subjects was given to Magistrates in the Mofussil. Act VIII. of 1836 provided that no person whatever should, by reason of place or birth, or by reason of descent, be incapable of being appointed a Principal Sudder Amin, a Sudder Amin, or Munsif within the territories subject to the Presidency of Bengal; and that every British-born subject or descendant of a British-born subject, who should be appointed to any of these offices, should in respect of all acts done by him *as such* be liable to the same proceedings, criminal and civil, and amenable to the jurisdiction of the same tribunal as if he were not of British birth or descent. It will be observed that the foundation of this jurisdiction is *consent*. A British subject by accepting office consents to become liable to the jurisdiction of all Courts, civil and criminal; but—and here the jurisdiction is expressly limited—only in respect of acts done by him in his official capacity.

Certain offices open to all. British subjects accepting such offices liable for official acts to jurisdiction of all Courts, Civil and Criminal.

appointed a Principal Sudder Amin, a Sudder Amin, or Munsif within the territories subject to the Presidency of Bengal; and that every British-born subject or descendant of a British-born subject, who should be appointed to any of these offices, should in respect of all acts done by him *as such* be liable to the same proceedings, criminal and civil, and amenable to the jurisdiction of the same tribunal as if he were not of British birth or descent. It will be observed that the foundation of this jurisdiction is *consent*. A British subject by accepting office consents to become liable to the jurisdiction of all Courts, civil and criminal; but—and here the jurisdiction is expressly limited—only in respect of acts done by him in his official capacity.

Section 40. Under Section 58 of the Post Office Act, XVII. of 1854, European British subjects were made punishable for certain offences against the Act by fine only, and to this extent were amenable to the jurisdiction of a Magistrate, Joint Magistrate, or person exercising the powers of a Magistrate. A similar provision was made by Section 30 of the Telegraph Act, XVIII. of 1854. Under Section 12 of

Offences against the Railway and Telegraph Acts and the Cantonments Act.

exercising the powers of a Magistrate. A similar provision was made by Section 30 of the Telegraph Act, XVIII. of 1854. Under Section 12 of

Act XVIII. of 1853 European British subjects were made amenable for offences committed in cantonments to the jurisdiction of a Magistrate, Joint Magistrate, or person lawfully exercising the powers of a Magistrate. Under the Railway and Telegraph Acts, as under the 53 Geo. III., cap. 155, sect. 105, the only punishment that could be inflicted was *fine*. Under the Cantonments' Act a sentence of three months' imprisonment with hard labour could be passed, the Magistrate being always in practice a European British subject.

Section 41. I may notice another class of cases in which European British subjects have been rendered liable to the jurisdiction of Mofussil Magistrates in respect of certain quasi-criminal matters. Section 1 of Act II of 1853

No person holding land to be, by reason of birth or descent, exempt from public duties or charges.

declared that no person whatever, being the owner, holder, or farmer of any property in land, or being the local agent or manager of any such property, was by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or from any duty whatsoever of a public nature to which he would otherwise be subject. Section 2 of the same Act provided that for non-payment of any such public charge or assessment, or for the breach of any such duty, or for any neglect or misconduct in the discharge thereof, any person, whatever

All persons liable, for breach or neglect, to same jurisdiction as Natives.

might be his place of birth or his descent, should be subject to the same laws and to the same jurisdiction as if he were a

Native of the territories under the Government of the East India Company. European British subjects, by acquiring property in land, thus by their own *consent* subjected themselves to a jurisdiction which had no existence for the officers of Government or other persons who had no connection with land.

Section 42. In order to understand the duties, neglect, and misconduct referred to in these provisions, we must refer to the following Regulations.

Duties imposed upon landholders by the Regulations.

By Section 21 of Regulation XII. of 1807, *Zillah and City Magistrates* were empowered to fine landlords up to

two hundred rupees for not sending in lists of village watchmen. By Section 13 of Regulation IX. of 1808, *Zillah and City Magistrates* were empowered to inflict punishment, subject to the limitation provided by Section 19 of Regulation IX. of 1807 (*see ante*, Section 16), upon landlords for not giving information as to the resorts of proclaimed dacoits. By Section 3 of Regulation VI. of 1810, similar jurisdiction in case of information not being furnished as to the resort of dacoits, thugs, &c., was given to the same Magistrates. Similar power was given by Section 10 of Regulation I. of 1811, in the case of landholders not furnishing information respecting receivers of stolen goods; by Section 12 of Regulation III. of 1812, in the case of landholders neglecting to give information as to proclaimed offenders; by Section 2 of Regulation VIII. of 1814, in cases of landholders neglecting to give information as to the commission of murders and other offences. Magistrates were by Section 10 of Regulation XX. of 1817 empowered to inflict a fine of two hundred rupees on landholders neglecting to obey the rules as to zemindari dāk or post. Under all these Regulations jurisdiction was conferred only upon *Zillah or City Magistrates*, who were always at that time Covenanted Civilians.

Section 43. It will be borne in mind that Regulation XIII. of 1797 authorized Assistants to exercise merely the judicial powers vested in Magistrates by Regulation IX. of 1793, and

Assistants not empowered to exercise quasi-criminal jurisdiction in cases of neglect of duty by landholders.

when further powers were conferred on *Zillah or District, and City Magistrates*

by Regulation IX. of 1807, it was expressly enacted (*see ante*, Section 16) that these extended powers were not to be exercised by Assistant Magistrates, who were restricted to the jurisdiction conferred by Section 8, Regulation IX. of 1793. The restriction thus imposed was subsequently modified by Regulation III. of 1821 (Clause 3, Section 2), which gave Assistant Magistrates more extensive powers (*see ante*, Section 21) of punishment in all cases

referred to them in which an individual might be "convicted of any criminal offence punishable under the Mahomedan law or the Regulations." It is clear, then, that Assistants to Magistrates could not under these provisions exercise the jurisdiction conferred upon Zillah and City Magistrates in the case of quasi-criminal offences connected with the duties imposed upon landholders. Before 1821 the jurisdiction of Assistants to Magistrates was restricted to petty offences, such as abusive language and the like, and their powers of punishment to fifteen days' imprisonment. After 1821 their extended powers of punishment applied only to criminal offences punishable under the Mahomedan law or the Regulations. No jurisdiction was given to them in the class of quasi-criminal cases connected with the duties imposed upon landholders by the Regulations, and this jurisdiction remained as before vested in the Zillah and City Magistrates.

Section 44. When Deputy Magistrates were appointed under Act XV. of 1843, they were directed to exercise (1) the powers of a Covenanted Assistant under Regulations XIII. of 1797, IX. of 1807, or III. of 1821, or (2) the full powers of Magistrates according to such orders as might from time to time be issued by the Local Government.

Deputy Magistrates also incompetent to exercise this jurisdiction. Under (1) it will be clear from what has just been said that they had no authority to decide landholders' cases or to exercise jurisdiction conferred by the Regulations above cited upon Zillah and City Magistrates. Under (2) they might be vested by order of the Local Government with larger powers of punishment than could be exercised by Covenanted Assistants under Regulations XIII. of 1797, IX. of 1807, or III. of 1821, but this did not in any way affect or alter the class of cases in which they were competent to exercise jurisdiction (*see ante*, Section 34).

Section 45. In 1857, a Bill was introduced into the Legislative Council, which contained a provision that no person whatever should, by reason of place of birth or by reason of descent, be in any criminal proceedings whatever exempted from the jurisdiction of any Criminal Court. This provision did not, however, find acceptance with the Select Committee to which the Bill was referred for consideration; and instead thereof there was inserted in the Bill a provision that no person should be empowered by Government to hold a preliminary inquiry in cases triable by any Supreme Court, or to arrest or hold to bail or commit any European British subject, unless the person so authorized were a Covenanted Servant or a European British subject.

Section 46. When the first Code of Criminal Procedure (Act XXV. of 1861) was passed, this provision was deliberately adopted and maintained. Section 39 provided that no person, who was not a Justice of the Peace, should commit or hold to bail any European British subject to take his trial before a Supreme Court of Judicature. When this provision was inserted in the

Code of 1861, no person other than a Covenanted Civil Servant or British inhabitant could be appointed a Justice of the Peace in the Mofussil—such had been the law since 1793 (*see* 33 Geo. III., cap. 52, sections 151 and 152, and 47 Geo. III., sess. 2, cap. 68, sections 4, 5, and 6; but under the 2 & 3 Will. IV., cap. 117, any resident not being a subject of a foreign State, could be appointed a Justice of the Peace for a Presidency town). The Code of 1861 further provided that any Magistrate (*i.e.*, European or Native) might hear a complaint against a European British subject, and issue a warrant of arrest, or hold him to bail with the view to the complaint being investigated by a Justice of the Peace. The object of this provision was to prevent justice being defeated by the escape of an offender. The 42nd section reserved the provisions of 53 Geo. III., cap. 155, sect. 105, and of Act VII. of 1853, but provided that the jurisdiction given by these enactments should be exercised only by a Justice of the Peace. This was a formal legislative reversal of any practice which might have arisen in consequence of the construction of the Sadr Court

Code of 1861.—Magistrate must be Justice of the Peace in order to have jurisdiction over European British subject.

(*see ante*, Section 19) or the opinion of the Advocate General. In 1860, the Indian Penal Code was passed, Section 2 of which provided that *every person* should be liable to punishment under its provisions and not otherwise for every act or omission contrary to the provisions thereof. The mixture of Mahomedan law and regulation enactment administered in the Mofussil was thus abolished, and persons of all races were made subject to the same *substantive criminal law*. This did not, however, affect the tribunals by whom that law was to be administered. In 1869 the law relating to the appointment of Justices of the Peace was consolidated and amended.

Consolidation of the law relating to Justices of the Peace, 1869.

No change was, however, made in the pre-existing law that Justices of the Peace for the Mofussil must be Covenanted Civil Servants or "other British inhabitants," whilst any persons resident within British India and not being subjects of any foreign State might be appointed Justices of the Peace for the Presidency towns.

Section 47. The law remained in this condition up till 1872. Before noticing the alterations which were made in that year, I may invite attention

Personal laws and customs reserved by modern enactment to the Native races inhabiting India.

to certain modern provisions of law by which personal rights, privileges, and customs have been preserved to the Native races inhabiting India. Section 24 of "The Bengal Civil Courts' Act," VI. of 1871, re-enacted the provisions already noticed (*see ante*, Sections 5, 9, and 13) in the following form:—"Where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution, the Mahomedan law, in cases where the parties are Mahomedans, and the Hindu law, in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished." The Parsees are allowed to retain their personal law in matters of marriage, divorce, succession, and inheritance (*see Acts XV. and XX. of 1865*). Buddhists, Sikhs, and Jains are left in the enjoyment of similar portions of their personal law, which they value. And the Governor General is empowered (Section 332 of Act X. of 1865) to exempt any race, sect or tribe from the operation of a Succession Act, which has operation throughout India. There are many instances of consideration, not quite consistent with the theory of perfect equality in the sight of the law, being shown to rank and condition. Under the provisions of the Code of Civil Procedure a letter may be substituted for a summons when the defendant is, in the opinion of the Court, of a rank which entitles him to such a mark of consideration. Women, who, according to the customs and manners of the country ought not to be compelled to appear in public, are exempted from personal appearance in Court. A similar exemption may be granted by the Local Government to men whose rank appears to entitle them to such a privilege (*see Sections 91, 640, and 641 of the Code of Civil Procedure*).

Section 48. In 1872 the Code of Criminal Procedure was revised, and,

Revision of the Code of Criminal Procedure in 1872. Alteration of the law affecting European British subjects.

after discussion and deliberation, the following changes were introduced into the law affecting European British subjects. No Magistrate, Justice of the Peace, or Sessions Judge was to inquire into a complaint or try a charge against a European British subject unless he were himself a European British subject. No Magistrate could exercise this jurisdiction unless he were a Magistrate of the first class and a Justice of the Peace, and no Justice of the Peace could exercise it unless he were a Magistrate of the first class. Magistrates thus qualified were empowered to try what were technically termed "Magistrates' cases," brought against European British subjects, and to pass a sentence not exceeding three months' imprisonment, or fine up to rupees one thousand, or both. Sessions Judges or Additional Sessions Judges, being European British subjects, and Assistant Sessions Judges, especially empowered and who had held office for not less than three years, were empowered to pass on a European British subject a sentence not exceeding one year's imprisonment or fine, or both. A European British subject

charged with an offence punishable with death, or with transportation for life, was to be committed to the High Court. Upon trials of European British subjects, before a Court of Session, not less than half the assessors or jurors were to be European British subjects. A European British subject convicted by a Magistrate might appeal to the Court of Session or to the High Court, and convicted by a Court of Session might appeal to the High Court. A Magistrate, having reason to believe that any person brought before him was a European British subject, was bound to ask him whether he were one or not. A European British subject might waive his privilege, and be tried by the local tribunal. Any European British subject detained in custody which he alleged to be unlawful might apply to the High Court, which was empowered to have him brought before it to abide such further orders as it might make.

Section 49. By these provisions Judges and Magistrates in the Mofussil were for the first time, after the lapse of nearly a century, invested with a limited jurisdiction to try and punish European British subjects. It is now a matter of history, and has been placed beyond doubt by the statement of the

Sessions Judges and District Magistrates in the Mofussil first invested with jurisdiction over European British subjects in 1872. Trial by their countrymen assured instead of trial by jury.

then Legal Member of Council (see the "Times" of the 2nd November 1883), that these provisions were the result of a compromise, and that the European community accepted the jurisdiction thus for the first time conferred upon Mofussil Judges and Magistrates, giving up their right to trial by jury in the High Court upon the understanding and assurance that they would be tried in the Mofussil only by their own countrymen. The law thus settled remained unaltered for ten years, and no attempt was, during this period, made to disturb it.

Section 50. In 1882 the Code of Criminal Procedure underwent a third periodical revision. The new Code received the assent of the Governor General on the 6th of March of that year, and was to come into force on the 1st January 1883. On the occasion of this

Fresh revision of the Code of Criminal Procedure in 1882.

Proposal to give Natives jurisdiction over British subjects considered and rejected.

revision the question of altering the law, so as to give Native Magistrates outside the Presidency towns jurisdiction over European British subjects, was mooted and considered. After consideration and discussion it was deemed inadvisable and inexpedient to make any alteration in the law relating to the administration of criminal justice in the case of European British subjects, or to interfere with the lines laid down in 1872.

Section 51. Fourteen days after the amended Code had received the assent of the Governor General, a letter was addressed by the Secretary to the Bengal Government to the Secretary to the Government of India, forwarding a note

Question reopened 14 days after the Revised Code had received the assent of the Governor General.

written on the previous 30th January by Mr. B. L. Gupta, a Covenanted Civilian and a Presidency Magistrate. Mr. Gupta advocated that the same jurisdiction over European British subjects, which is exercised by European Covenanted Civil Servants, should be given to Native Covenanted Civil Servants. He based his proposal on the ground that the previous state of the law gave rise to an invidious distinction, and to many practical inconveniences in the case of those Natives who in course of time expect to attain to the position of a District Magistrate or a Sessions Judge. He argued that when once Natives were entrusted with the responsible office of a District Magistrate or a Sessions Judge, their powers should not be crippled, and that the question seriously affected the efficiency of district administration.

Limited nature of original proposal for giving jurisdiction over British subjects to Natives of India.

The proposition put forward by Mr. Gupta was, it will be observed, a limited one, namely, that the extension of jurisdiction over European British subjects should be confined to Native members of the Civil Service holding

the office of District Magistrate or Sessions Judge. The Bengal Government, in their letter of the 20th March 1882, supported this limited proposition, observing that, in the opinion of the *then* Lieutenant Governor, the time had arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by the new Code of Criminal Procedure.

Section 52. Now, I venture to take exception to the form of expression here used, as involving a serious fallacy which has since permeated and coloured, not only the utterances of public officers, but also the arguments advanced by the press and the public. In the first place, the new Code of Criminal Procedure did not *impose* any restrictions. It left the law in this respect in precisely the same condition in which it had been since Englishmen first came to India. Then, when we speak of "*restrictions*" on the powers of Judicial Officers and "*judicial disqualifications based on race distinctions*," we use an erroneous form of expression which has the effect of putting the burden of proof upon the wrong side. It lies upon those who seek to impose *restrictions* or *disqualifications* upon any race or class to prove by the most cogent arguments the necessity for their imposition. Even when the question is whether *restrictions* or *disqualifications* shall be maintained, a very slight *prima facie* case for their removal may fairly cast on those who advocate their maintenance the burden of showing that the ends of justice or public policy require that they should be maintained. But, in the present case, the question is one, not of *disqualification*, but of *qualification*—it is not whether *restrictions* or *disqualifications* shall be removed, but whether the personal law of a particular race shall be abrogated—whether a right which has always been enjoyed by a particular class shall be taken away. And it lies upon those who assert the affirmative of this proposition to prove it. It appears to me so necessary that the absolute accuracy of this view should be understood by all parties to the controversy that, at the risk of being tedious, I shall submit at some length the grounds and authorities upon which it is based.

Section 53. Mr. Story, in his work on the "Conflict of Laws," has the following passage:—"When the northern nations, by their irruptions, finally succeeded in establishing themselves in the Roman empire, and the dependent nations subjected to its sway, they seem to have adopted, either by design or from accident or necessity, the policy of allowing the different races to live together, and to be governed by and to preserve their own separate manners, laws, and institutions in their mutual intercourse."

Origin of personal rights. "While the conquerors, the Goths, Burgundians, Franks, and Lombards, maintained their own laws and usages and customs over their own race, they silently or expressly allowed each of the races, over whom they had obtained an absolute sovereignty, to regulate their own private rights and affairs according to their own municipal jurisprudence. It has accordingly been remarked, by a most learned and eminent jurist, that from this state of society arose that condition of civil rights denominated *personal rights* or personal laws in opposition to territorial laws." The eminent jurist here referred to is Savigny, who, in his "History of the Roman Law in the Middle Ages," speaking of the state of things which existed between the conquering Goths, Burgundians, Franks, and Lombards, and the races conquered by them, says:—"Both races lived together, and preserved their separate manners and laws. From this state of society arose that condition of civil rights, denominated *personal rights* or *personal laws*, in opposition to *territorial laws*. . . . In the same country, and often indeed in the same city, the Lombard lived under the Lombardic, and the Roman under the Roman law. The same distinction of laws was also applicable to the different races of Germans. The Frank, Burgundian, and Goth resided in the same place, each under his own law, as is forcibly stated by the Bishop Agobardus in an epistle to Louis le Debonnaire. 'It often happens,' says he, 'that five men, each under a different law, may be

“ ‘found walking or sitting together.’ ” The same thing happened in India, and the Bishop Agobardus might have written the same account from Calcutta or Bombay or Madras.

Section 54. In the case of the Advocate General of Bengal *v.* Rani Sarnomayī Dasi (II. Moore’s Privy Council Appeals, N. S., 59), Lord Kingsdown,

View taken by the Privy Council as to the settlement and position of the English in India.

delivering the judgment of the Privy Council, said as follows:—“ Where Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the sovereignty of their own State; and those who live amongst them and become members of their community become partakers of, and subject to, the same laws. But this was not the nature of the first settlement made in India; it was a settlement made by a few foreigners for the purpose of trade in a very populous and highly civilized country, under the government of a powerful Mahomedan ruler, with whose sovereignty the English Crown never attempted nor pretended to interfere for some centuries afterwards. If the settlement had been made in a Christian country of Europe, the settlers would have become subject to the laws of the country in which they settled. It is true that in India they retained their own laws for their own government within the factories,* which they were permitted by the ruling powers in India to establish, but this was not on the ground of general international law, or because the Crown of England or the laws of England had any proper authority in India, but upon the principles explained by Lord Stowell in a very celebrated and beautiful passage of his judgment in the case of ‘The Indian Chief’ (3 Rob. Adm. Rep., 28).” The passage here referred to is as follows:—“ In the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation; they continue strangers and sojourners as all their fathers were, *doris amara suam non intermiscuit undam*; not acquiring any national character under the general sovereignty of the country, and not trading under any recognized authority of their own original country, they have been held to derive their present character from that of the association or factory under whose protection they live and carry on their trade.” In *Freeman v. Fairlie* (1 Moo. Ind. Ap. 305), Lord Lyndhurst, delivering the judgment of the Privy Council, said:—“ Those persons who established themselves in India carried with them the English law, . . . and we are to consider, as far as British subjects are concerned, that the English law is not only now the law of Calcutta, but that it was so from the earliest period of that settlement.†

Section 55. Mr. Westlake, in his treatise on “Private International Law,” says:—“ The establishment of the British in India presented originally a case similar to that of European merchants resident in factories in the Levant, and, as the latter have always been governed by their own laws and not by

How English law became the personal law of Englishmen in India.

“ the Turkish, so the former were from the first regulated by the English laws, since there never could be a

* Elsewhere, in the same judgment, Lord Kingsdown said:—“ We were referred by Mr. Melvill, in his very able argument, to the charter of Charles II., in 1661, as the first, and indeed the only one which in express terms introduces English law into the East Indies. It gave authority to the Company to appoint Governors of the several places where they had or should have factories, and it authorized such Governors and their Council to judge all persons belonging to the said Company, or that should live under them, in all causes, whether civil or criminal, according to the laws of the kingdom of England, and to execute judgment accordingly. The English Crown, however, at this time clearly had no jurisdiction over Native subjects of the *Mogul*, and the charter was admitted by Mr. Melvill (as we understood him) to apply only to the European servants of the Company; at all events, it could have no application to the question now under consideration. The English law, civil and criminal, has been usually considered to have been made applicable to Natives within the limits of Calcutta, in the year 1726, by the charter, 13th George I. Neither that nor the subsequent charters expressly declare that the English law shall be so applied, but it seems to have been held to be the necessary consequence of the provisions contained in them.”

† In the case of the Maharani of Lahore, Peel, C. J., said:—“ Beyond the local limits of Calcutta the English law on this subject (viz., personal liberty) is the personal law of a class, viz., British subjects, which they carry with them.”

“thought of applying to them either the Mahomedan or the Gentoo jurisprudence which they found in the country. But afterwards, and indeed, long since, although a titular sovereign reigned till lately at Delhi, and no official change was made in those relations which the Company once had with him as the delegated administrators of certain of his provinces, yet it became the established doctrine of our lawyers that the British Crown enjoyed the sovereignty* of the soil in what was even then called British India. No exact account can be given of the mode in which, or even of the time when, this view began to be adopted; it appears to have resulted from a silent accommodation of theory to fact. It had certainly not been adopted in 1773, when the Act was passed which empowered the King to erect the Supreme Court at Calcutta, for the preamble of the thirteenth section recites that sufficient provision had not been made for the administration of justice in such manner as the state of the Company’s Presidency at Fort William in Bengal would require, *so long as the Company should continue in possession thereof*. The erection of the Supreme Court was, therefore, not an act of territorial sovereignty, still less the yet earlier erection of the Mayors’ Courts at Calcutta and Madras; and in their first administration of English law to British subjects in India, these tribunals must accordingly have proceeded on the same principles which have been already pointed out as governing the case of the Levant factories. I will therefore quote the provisions of the statute passed under this earlier state of things for the guidance of the Supreme Court of Calcutta, as being a legislative acknowledgment of the natural obligation of laws as between persons, when unaffected by the sovereignty of the soil. . . . Here, therefore, is the true distinction which, notwithstanding some analogy, exists between British India and a colony formed by settlement. The European and Native communities in the former already possessed common laws, concerning land as well as other things, previous to the establishment of our sovereignty, which, therefore, could not change them by any tacit operation. The colonists in the latter bring with them the English law, as ‘their birthright’ our lawyers call it, to a virgin soil, but to which the territorial character of laws recognized by all old and advanced countries is immediately assumed to apply, so that on that soil the law which is personal to its sovereigns becomes at once territorial.”

Section 56. These opinions of eminent lawyers and text writers, and the

historical account given in the previous portion of this paper, show how Englishmen carried their own law with them

to India, just as the Goths and Burgundians, and Franks and Lombards, in the language of Mr. Story, maintained their own laws and usages and customs over their own race, when they established themselves in the Roman Empire and the dependent nations subjected to its sway. That Englishmen should be tried by their own countrymen was at the same time part of this personal law, and a natural incident of their settlement in and occupation of the country. It is not, therefore, an accurate use of language to speak of this right, which is a portion of their personal law and the natural outcome of the circumstances under which they acquired the country, as a *restriction* or *disqualification* upon members of the other races, whom they have permitted equally with themselves to enjoy their own personal law in all matters in which they valued it, and in which its enjoyment was not opposed to natural justice, or was not inconsistent with the position which the British had necessarily to take up in the country. It may be said that the other races in India should have been allowed a similar right. To this there is a two-fold answer:—(1) they did not desire it; they preferred to have justice administered to them by Englishmen; (2) it became absolutely necessary in the interests of the people themselves to take the administration of justice out of Native hands (*see ante*, Section 7). There can be no doubt that by stating the question for discussion in what I think I have shown to be an erroneous form, and thereby casting the burden of proof upon the wrong

* See *ante*, Section 30, note.

side in the controversy, not only have feelings been unnecessarily embittered at the outset, but the right determination of the true question at issue has been rendered more difficult.

Section 57. To resume the narrative of events, a right understanding of which is necessary to any judgment upon the measure under discussion, the Government of India not only approved of the limited proposition sent up by the Bengal Government, but proceeded to frame a measure of a much more extensive character, intended, as set out in the "Statement of Objects and Reasons," "to remove from the Code at once and completely every judicial disqualification which is based merely on race distinctions." By this measure it was proposed that the Government should have the power to appoint the following persons to be Justices of the Peace:—

- (1.) Members of the Covenanted Civil Service.
- (2.) Members of the Native Statutory Civil Service.
- (3.) Assistant Commissioners in Non-Regulation Provinces.
- (4.) Cantonment Magistrates.

It was further proposed that all Sessions Judges and District Magistrates should be *ex officio* Justices of the Peace, and that so much of the present law should be repealed as provides that a Sessions Judge or District Magistrate must himself be a European British subject, in order to exercise jurisdiction over European British subjects. The Bill as drafted also repealed the law which has been in force since 1793, and which empowers the Government to appoint such European British subjects (other than Covenanted Civil Servants) as it thinks fit to be Justices of the Peace. The effect of this last provision would have been to disqualify from holding the office persons who, under the existing law in India, and who in their own country, may be Justices of the Peace. Thus the Bill, while professing to remove every judicial disqualification based on race distinctions, actually imposed such a disqualification upon European British subjects. I think it is only fair to bear this fact in mind when we have to consider the opposition which it has excited and the intemperate language used by those who excel in zeal rather than in discretion. As to this disqualifying provision, it is now unnecessary to say further, inasmuch as it is understood to have been withdrawn. A large portion of the rest of the Bill has also been abandoned, and it is now stated (page 2305 of the "Supplement to the Gazette of India," of 15th December 1883) that the jurisdiction to be conferred by the Bill upon Native Magistrates over European British subjects is proposed to be confined to Sessions Judges and District Magistrates *ex officio*. In other words, the Government now contemplates reverting to the limited proposition originally sent up by the Government of Bengal. It may well be (though upon this point high authorities have expressed doubt) that if this limited proposition alone had been originally incorporated in the Bill, that storm of opposition would have been avoided, which, during the last nine months, has spread through the length and breadth of this land, and has extended even to England.

Section 58. The difficult question which has then to be determined at the present juncture is whether the Government shall abandon any legislation which has for its object to make European British subjects *compulsorily liable* to the jurisdiction of Native Magistrates. Before proceeding to discuss this question, let me state the propositions which I have attempted to establish in this paper. These propositions are four in number:—

First. Englishmen carried their own personal law with them to India, and have since their first settlement been governed by that law.

Second. While retaining their personal law for themselves, they have allowed the races who inhabit this vast empire to retain their personal law in all matters in which these latter have valued it, and they have throughout shown the very greatest consideration for the feelings, ideas,

customs, and religious institutions of the various races and classes comprised in the immense population of India.*

Third. Englishmen have substituted a pure, and, as far as has been possible, an effectual† administration of justice, for a corrupt, barbarous, unjust, and oppressive system which previously prevailed in the country. Esteeming it themselves a valuable privilege to be judged by their own countrymen, they gave at first the same privilege, as one of the highest blessings they could confer, to the Natives of the country, and those Natives have in many ways shown that they prize this privilege as much as Europeans do.

Fourth. The right of trial by their own countrymen is part of the personal law of European British subjects, exercised at first from the necessity of their position, and continued to be exercised for a century, so that it has become a prescriptive privilege. The origin of this right is to be found in the introduction of English law with Englishmen into India, and in its continued exercise; not in any measure imposing a restriction or disqualification upon the members of any other race or class.

Section 59. The point for determination, therefore, is, not whether any

The proper mode of stating the question.

restriction or disqualification shall be removed, but whether Englishmen shall

invite the Natives of this country to exercise over them the same jurisdiction which Englishmen exercise over themselves. We have to consider whether in this matter we shall ask the Natives to step up on the same platform with ourselves—a platform upon which, it will be remembered, they have never yet stood, and from which they can make therefore no pretence of saying that they have been thrust down. It may appear to reasonable minds that Englishmen may not unfairly claim to say whether they shall issue this invitation. If this claim be not admitted, it seems impossible to deny that the burden of making out a case for abolishing the privilege, for taking away the right, lies not upon those who resist but upon those who propose the present measure. In order to see, first, how far such a case has been made out, and secondly, if made out, how far it has been rebutted, let us now examine and weigh the arguments which have been advanced on either side.

Section 60. The arguments which have been put forward in support of

Arguments in favour of the Bill.

the Bill, either by its original promoters, or by those who have taken their side

in the controversy are the following:—

I. That the measure is required by administrative convenience.

* One of the latest instances of this consideration is to be found in the following paragraph of the Proclamation of the 1st November 1858:—"Firmly relying Ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, We disclaim alike the right and the desire to impose Our convictions on any of Our subjects. We declare it to be Our royal will and pleasure that none be in anywise favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law. And We do strictly charge and enjoin all those who may be in authority under Us that they abstain from all interference with the religious belief or worship of any of Our subjects, on pain of Our highest displeasure."

† And because we could not at once make it as effectual as we believed our own system to be for ourselves, this was no ground for saying that we should have given up our own system where we were personally concerned, and accepted the inferior system as a substitute. Macaulay, speaking of the Sadr Court in 1837, wrote:—"If it is fit to administer justice to the great body of the people, why should we exempt a mere handful of settlers from its jurisdiction? That distinction seems to indicate a notion that the Natives of India may well put up with something less than justice, or that Englishmen in India have a title to something more than justice. We proclaim to the Indian people that there are two sorts of justice—a coarse one which we think good enough for them, and another of superior quality which we keep for ourselves." This epigrammatic argument does not fairly put the question, for it ignores the most important facts. The Sadr Court did not and could not administer justice to the body of the people in the sense in which this phrase is applied to the handful of settlers. It was a court of appeal and revision only. In the Mofussil there were not, and the Company could not afford to have, enough Europeans to administer justice to the body of the people. Without men to carry out our system, with a corrupt police, with the Mahomedan criminal law and law of evidence in our way, with a thousand obstacles that only time, and patience, and perseverance, and experience could remove, it was absolutely impossible that we could create at once—impossible that we could for generations introduce and perfect—a system as good as our own. What then? While we earnestly set about the work of doing this, were we called upon to give up our own system for ourselves because it was impossible that we could give it to the Natives?

- II. That Natives have been vested in the Presidency towns with jurisdiction over European British subjects with success, or at least without prejudice to the interests of justice, and that therefore a similar measure will be equally successful or equally harmless in the Mofussil.
- III. That it is desirable to secure uniformity by assimilating the administration of the criminal law in and outside of the Presidency towns.
- IV. That the right of European British subjects to be tried by their own countrymen is an anomaly and should therefore be abolished.
- V. That this right involves an injury to other classes in the community, and should therefore be taken away.
- VI. That this right implies a stigma upon the Natives of this country.
- VII. That the abolition of the right is necessary in order to the more effectual administration of justice.
- VIII. That its abolition is necessary in order to the efficiency of district administration.
- IX. That its abolition is required by the Proclamation of the 1st November 1858.
- X. That this right should be taken away on the ground that all class differences should be removed.
- XI. That its existence and the objections to its abolition are based upon sentiment merely.

Examination of these arguments.

Section 61. Let us now examine these arguments a little in detail.

I. The argument of administrative convenience has been so effectually

I. Arguments of administrative convenience.

disposed of in the papers published in the Extra Supplement to the "Gazette of India" of the 18th September last.

that it is unnecessary to deal with it here. So far as concerns the Lieutenant Governorship of Bengal and the Chief Commissionership of Assam, in which this argument might be expected to find the greatest materials for its support, it has been very clearly shown that the exigencies of administrative convenience do not require any change in the law relating to European British subjects.

II. The next argument is drawn from the success or harmlessness of the change of system in the Presidency towns.

II. Arguments from change of system in the Presidency towns.

This argument assumes as a fact that the change of system has been

successful, or at least harmless, in the Presidency towns. But the truth of this fact is denied by some of those on the other side. Even if the truth of the fact be conceded, the argument can be valuable only if the experiment can be made in the Mofussil under conditions similar to those which exist in the Presidency towns. In the papers published in the Extra Supplement to the "Gazette of India," it has been shown that similar conditions do not exist. In the Presidency towns there is a public press, a large European community, a strong public opinion, while legal advice and assistance are readily to be obtained, and this in the language of the accused European. Then the Native Magistrates have the example of European Judges immediately before their eyes, and they live in an atmosphere of European life and thought. In any transactions that may come before a Magistrate, the accused European is likely to have witnesses of his own race, while in the Mofussil he is more usually alone amongst Natives. Further, the High Court is on the spot, and, in case of a miscarriage of justice, a prompt remedy can be had. All these conditions are wanting in the Mofussil.

Section 62. III. The *third* argument is that the measure is advisable

III. Argument from resulting uniformity.

because it will bring about uniformity in the administration of criminal justice

by assimilating things within and without the Presidency towns. This argument assumes that uniformity is an advantage, and should therefore be secured. But the proposition assumed as the major premise of this argument is one the truth of which many persons of high authority altogether deny. These persons say that there has probably been no more serious cause of

error and failure in our legislative endeavours in this country than the desire to secure uniformity of law for two hundred and fifty millions of people, differing in race, in religion, in bodily physique, in intellectual power, in habits of life, in mental and moral progress, and in almost every quality in which the different races of the human family can differ. The proposal to make a shoe that would fit every foot in the same population would, they say, be equally wise and equally successful. The papers published in the Supplement to the "Gazette" contain sufficient evidence to show that if the proposed measure were passed and could be worked in some parts of India, it would be difficult, if not impossible, to work it in other portions of the country, in which gaols, police, and other appliances necessary to the administration of criminal justice are in a backward condition or are non-existent.

Section 63. IV. The *fourth* argument is that the right is an anomaly.

IV. The right of a British subject to be tried by his countrymen is an anomaly.

But this mere statement of a fact affords no ground for concluding that the right should be abolished. The right of adoption, by which, upon failure of heirs, a stranger may be introduced into a family, and may have conferred upon him a valuable estate, considerable wealth, and position, is an anomaly. In many cases, where immense property would have otherwise escheated to Government and diminished the pressure of taxation, rendered (it may be) an income-tax or a license-tax unnecessary, this anomaly has prevented the State from reaping the benefit of this source of income. But the anomaly still exists, and no one has been found to contend that it should be removed merely because it is an anomaly. This is a single instance of many anomalies which yet exist in India. Others have ceased to exist, having been removed as time and progress brought about a convenient season for their removal without violence to the feelings of those for whom they existed. It may with reason be said that the same convenient season ought to be awaited for the removal of the Englishman's anomaly, if such it be, and that the repugnance and heart-burning which the Bill has created are proof that this convenient season has not yet arrived.

Section 64. The *fifth* argument is that the existence of the right involves an injury to other classes. This argument is put forward in the memorial of the inhabitants of Bombay, to be found

V. Existence of right involves injury to other classes.

at page 91 of the Supplement to the "Gazette." The memorialists advance the bare statement, but make no attempt to prove it by facts. I do not find that this argument has been brought forward by other persons or in any other part of India, and as it is not even explained in what the injury consists, it may safely be discarded from notice.

VI. The *sixth* argument is that the existence of the right implies a stigma

VI. The existence of the right implies a stigma on Native Magistrates.

upon Native Magistrates, who are not permitted by the existing law to exercise jurisdiction over European British subjects. It has been pointed out by several of those who have dealt with this argument that no stigma can be reasonably implied from the existence of a privilege personal to Europeans. The right enjoyed by foreigners* to be tried by a jury partly composed of foreigners does not imply, and has never been supposed to imply, any stigma upon these jurors who might otherwise have sat to try them. The Magistrates of Oxford, or the Judges of Assize, never supposed that any stigma was cast upon them because indictments against scholars or privileged persons belonging to the University of Oxford are tried by a jury *de medietate*, half of freeholders and half of matriculated persons, before the High Steward of the University. The civilized nations of the West see no stigma in conceding to Public Minister of Foreign States

* The 6 Geo. IV., cap. 50, sec. 47, provides for half the jury being aliens upon the trial of an alien in England for felony or misdemeanour. The Indian Code of Criminal Procedure allows Americans and Europeans, other than British subjects, a similar privilege (Section 460); and also allows Natives the right to have a jury the majority of which shall consist of persons who are neither Europeans nor Americans (Section 275).

an entire exemption from the local jurisdiction both civil and *criminal*—an immunity which extends not only to the person of the Minister, but to his family and suite, his secretaries, his servants, his house and his property. The Government of India did not imagine that they incurred any stigma when they conceded privilege from all civil and *criminal* process to His Highness the Nawáb of the Carnatic and his family, household and retinue (*see* Act I. of 1844), or when a similar privilege of a more limited nature was allowed to the Nawáb Názim of Bengal (*see* Act XXVII. of 1854). Under the 13 Geo. III. cap. 63, sect. 15, the High Court is not competent to hear, try, or determine any indictment or information against the Governor General or any Member of Council for any offence not being treason or felony. It has never occurred to the Judges of the High Court to suppose that any stigma was cast upon them because the Governor General and Members of Council cannot be tried by them, and can be tried in England only for offences committed in India. It has occurred to no one to suppose that any slur is cast upon Her Majesty's Judges in England because a Peer of the realm must, in cases of treason and felony, be tried, not by them, but by his own peers before the Court of the Lord High Steward. If in none of these cases the desire to exercise authority over others suggested that the privilege of a class, more or less limited, implied a stigma on the rest of the community, it may safely be concluded that the argument from any supposed stigma upon Native Magistrates has no probative force, and ought never to have been advanced.

Section 65. VII. The *seventh* argument is that we ought to take away the right of European British subjects

VII. The more effectual administration of justice requires that the right be taken away.

to be tried by their own countrymen, because this is necessary in order to the more effectual administration of justice.

It is said that unless all local Magistrates have the power to receive complaints against European British subjects, offenders of this class may escape and defeat justice; and again, that it is extremely hard upon Natives to have to travel from thirty to a hundred miles in order to obtain justice against Europeans. The first allegation altogether overlooks the provisions of the existing law already referred to (*ante*, Section 46), which allow *any* Magistrate, European or Native, to entertain a complaint, and, if necessary, to issue a warrant of arrest, such warrant being made returnable before a Magistrate having jurisdiction. These provisions effectually prevent any defeat of justice by the escape of the offender. Then the argument as to distance applies equally to all extensive limits of jurisdiction in large districts. In so far as it applies to Europeans especially, it merely states a condition of things which has always existed; and it must be borne in mind that the Government, with a liberality that astonishes the Oriental mind, pays the travelling charges of the complainant and his witnesses, and a subsistence allowance as long as they are away from their homes, while the extension of railways and other means of communication is daily diminishing the difficulty of transit and the discomforts of travelling.

VIII. The *eighth* argument is that the right must be taken away in order

VIII. Abolition of right expedient in order to the efficiency of district administration.

to the efficiency of district administration. "If," says Mr. Gupta, "you do entrust us with the responsible office

"of a District Magistrate or of a Sessions Judge, do not cripple us in our powers; the question affects seriously the efficiency of district administration." Mr. Gupta does not say, and no one has pointed out, in what manner the efficiency of district administration would be seriously affected if the District Magistrate, being a Native, had not power to take up the cases of Europeans. The District Magistrate in these provinces very seldom takes up criminal cases of any kind. Last year (1882) of a total of 141,972 criminal cases disposed of in the Lower Provinces of Bengal, the District Magistrates disposed of 1,006, or about .7 per cent., while the other Magistrates disposed of 140,966, or 99.3 per cent. His functions are chiefly those of administration and supervision; and how his efficiency would be impaired, if he were not by law

invested with a power which in practice he would seldom exercise, is not quite obvious.

Section 66. IX. The *ninth* argument is that the Proclamation of the 1st November 1858 requires that the

IX. The Proclamation of the 1st November 1858 requires the abolition of the right.

right of Englishmen to be tried by their own countrymen should be taken away if we would be true to the promises we have made and the hopes we have held out. The passage of the Proclamation relied upon in support of this argument is as follows:—"And it is Our further will that, so far as may be, Our subjects of whatever race or creed be freely and impartially admitted to offices in Our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge." The first observation that may be made upon this argument is, that if the supposed duty were really cast upon us by the passage of the Proclamation relied upon, it is somewhat extraordinary that this did not occur to any one in 1858, and that no one has, during a quarter of a century and up to the present year, discovered the breach of faith which we are charged with having committed. I think we should be slow to accept any present construction of the words in question, which necessarily casts such a stigma upon those who have preceded us in the government of this country. The true answer to the argument is, however, this, that the admission of any class of individuals to an office has no connection whatever with the duties and functions which belong to that office. To use again an illustration which I have already employed, no one has ever supposed that persons eligible to the office of High Court Judge have not been fairly and impartially admitted to that office because, by an old statute, the Governor General and Members of Council are not subject to their jurisdiction. The 3 & 4 Will. IV., cap. 85, sect. 87, provided, in 1833, as has already been pointed out, that no Native should, by reason of his religion, place of birth, descent, or colour, be disabled from holding any place, office, or employment under the Company, and it has never occurred to any one since, during half a century, to suppose that the provisions of this statute were set at naught because Native Magistrates in the Mofussil were not created Justices of the Peace. Can it be doubted that, if the ineligibility of Natives to the office of Justice of the Peace had been or ever could be supposed to depend, not upon the privilege of the European, but upon the disability of the Native, the cry of breach of faith would have been raised long ago?

Section 67. X. The *tenth* argument is that the right of the Englishman

X. All class differences, and therefore this right, should be removed.

should be taken away because it is desirable that all class differences should be removed. This argument proves too much. If it is a sound one, the Parsi and the Mahomedan, the Hindu and the European, should be governed by the same laws of succession and inheritance; the right of adoption should be taken away, and the power of divorce abolished; the distinctions of caste should cease, and the land, if not the personal property of the community, should be redistributed. In fact, the foundations of society, as it now exists in India, should be effaced, and uniformity of rights, religions, and manners should be established by Act of the Legislature. The Legislative power has been magnified at times by the enthusiasts of other countries; but no one has ever yet imagined that it extends to remove those inequalities, which exist in the nature of things, and which a Divine Providence has thought necessary for the government of the world.

XI. The *eleventh* argument is that the Englishman's right should be taken away because its existence is based upon sentiment merely. This argument assumes, contrary to fact, that the right is based upon sentiment

XI. The right is based upon sentiment merely.

alone, while those who advance it ignore the influence which sentiment has ever exercised in the lives of individuals and of nations. It may, however, well be replied that there is far less sentiment with those who ask to be permitted to keep a valued

privilege which they have always enjoyed, than with those who seek to take it away, not because its enjoyment injures them, but because it wounds their vanity that others should have something which they have not. This is the spirit that invents false doctrines of political economy and preaches communism to the masses.

Section 68. These are the arguments which have been advanced in support of the Bill. If they can be thought to have established a *primâ facie* case for the measure, even in its modified shape, becoming law, it will be well to examine the arguments on the other side and see how far by them this *primâ facie* case is rebutted or wholly destroyed.

Arguments against the Bill.

Section 69. The arguments against the Bill are:—

- I. That the persons affected by it were not heard before it was introduced.
- II. That Englishmen are the dominant race, and should therefore enjoy this special privilege.
- III. That if this right be taken away, the effect will be to diminish our prestige in the eyes of the Natives of the country.
- IV. That Englishmen are unanimously unwilling to submit to the jurisdiction of Natives, and should not be compelled.
- V. That, if the Bill become law, Native Magistrates will be influenced by race prejudices, and so decide unfairly where Englishmen are concerned.
- VI. That Natives, being aliens in religion, are unfit to administer justice to Christians.
- VII. That Natives are unfit because their social customs are altogether different, and they do not understand English habits and manners, especially as regards women.
- VIII. That Natives do not understand, and are incapable of dealing with, special cases connected with railway matters and the like.
- IX. That Englishmen have no confidence in Natives, and should not be asked to submit to be judged by those in whom they have not confidence.
- X. That Natives are not equally fit with Englishmen to administer justice, because they are not as independent as Europeans.
- XI. That Natives are not equally fit with Englishmen, because they have not the same rectitude of character.
- XII. That there is no true equality amongst Natives, and they are, therefore, incapable of dealing equal justice to Englishmen.
- XIII. That the right of trial by their countrymen is a privilege which has long been enjoyed, and, therefore, it should not be taken away unless a good case be established for taking it away.
- XIV. That the privilege is prized by all Englishmen in India, who make up a large number, and is to them a real privilege, while its abolition will gratify but a small number of Natives.
- XV. That this right or privilege, being part of the personal law of Englishmen, they should be permitted to retain it as long as they value it, seeing that Natives are and have been allowed to retain their personal law where prized by them.
- XVI. That the measure, if passed into law, will prevent the introduction of capital into the country, and so retard its material progress.
- XVII. That it will inflict grievous disgrace upon Englishwomen, whenever they have to appear before Native Magistrates.
- XVIII. That the Bill, if passed, will create strained relations and cause bitterness of feeling between the two races, a very undesirable result of legislation.
- XIX. That there will be a danger of Englishmen being assailed by false cases.
- XX. That the measure is one of general application, while in some parts of the country there are no proper appliances for giving effect to it.

- XXI. That no necessity has arisen for the proposed change in the law, and such change is therefore undesirable.
- XXII. That the measure, even if advisable on other grounds, is at the present juncture premature.
- XXIII. That, the Code of 1882 having been passed and the law settled for the time, it is inexpedient again, and at such a brief interval, to disturb the law.
- XXIV. That the proposed alteration in the law involves a breach of faith towards the English community, regard being had to what occurred in 1872.

Section 70. Let us now examine these arguments also more in detail.

I. The *first* argument is of particular value at the present stage. In all matters of contemplated legislation it has been usual to give those likely to be affected by a new law an opportunity of being heard for or against the proposed legislation. A set of very

I. Europeans not heard before the measure was introduced. careful rules have recently been made in the Legislative Department with the

very proper object of affording special facilities to the Natives of this country in this respect. Unfortunately no such facility was afforded to British subjects on the present occasion. If it had been afforded, it is reasonable to suppose that the extensive measure which has created such a storm of opposition would not have been introduced, and that the more limited proposal, which is now about to be substituted, would have been introduced into Council. If the extensive measure had not been brought forward, the heat of opposition would not have been excited, and the intemperate language which has embarrassed the Government would not have been used. Statesmen may say—and the Native supporters of the Bill have not lost the opportunity of telling them that they would wisely say—that to yield to the opposition that has arisen—to yield, as has been said, to the language of menace—is an undignified and impossible course for the Government. That language intemperate and improper has been used, there is no gainsaying; and the fact of its having been evoked furnishes a curious comment upon the argument that would deal with the question as an unimportant matter of sentiment. But a strong and independent and generous Government may well condone—and under the circumstances there is a certain justice in condoning—that which would never have occurred, had the usual course been followed, and British subjects been afforded an opportunity of discussing the principle of the measure before the Bill was introduced.

Section 71. The *second* argument, that the Englishmen are the dominant race, and are therefore entitled to a

II. The dominant race should have a special privilege, does not command my sympathy. As an individual, I assent to

that policy which, having *first* fitted the Natives of this country for honourable employment and high office, would *then* appoint them thereto, that policy which has for its ultimate object to raise the Natives to our own level; but I deprecate precipitate action, which may have the effect, not of raising them to our level, but of bringing us down to theirs, and so, by endangering the success of our early experiments, may furnish an argument against the policy itself. I entertain the opinion that, merely because we are the paramount race, we should not create for ourselves any new right which aggrandizes us to the detriment of those who are now our fellow subjects; but I deny that, in asking to retain our personal law, we seek anything that is open to objection as being opposed to this principle of conduct.

Section 72. III. The *third* argument is that our prestige will be diminished in the eyes of the Natives of the

III. Abolition of the right will diminish our prestige. country, if the Englishman's right to be tried by his own countrymen is

taken away. I do not attach much importance to this argument. I agree with those who say that the real prestige of the ruling race depends upon a just and generous administration, and the power to carry out this admini-

stration effectually.* Those Natives of the country who think at all about the present question will understand that the right has not been taken away from us by *vis major*, but that we ourselves, having the power to retain it, have voluntarily given it up. Our prestige would, I think, suffer little by our action in this matter; but I doubt if our generosity will add to our reputation for wisdom in the minds of our Native fellow-subjects.

Section 73. IV. The *fourth* argument is that British subjects in India are unanimously unwilling to give up the

IV. The right should not be taken away, as British subjects are unwilling to give it up.

right to be tried by their own countrymen, and that, therefore, this right should not be taken from them. It has

been pointed out by high authority that the privilege is that of the accused, not of the Judge; and if this is to be conceded, which it must be, the unwillingness of the Englishman to be tried by a tribunal which does not command his confidence supplies an argument against the measure which deserves the most serious consideration. He withholds his confidence because, whether rightly or wrongly, he doubts the ability or integrity of the Judge, or believes him to be wanting in sympathy with his own race and class, and therefore less competent to discern the inherent probability of guilt or innocence. No Act of the Legislature will create this confidence. Without it, should the accused be compelled to submit himself to the authority of the tribunal?

Section 74. Arguments V., VI., VII., VIII., IX., X., XI., and XII. deal with the question from a point of view more immediately affecting the Natives of the country. Personal arguments are at all times unpleasant, and on the present occasion they are particularly so; but they have been throughout the controversy freely advanced on either side, and I think we should not hesitate to deal with them. I trust that nothing which I shall say in this paper will give offence—I certainly do not mean to give any, the slightest offence—to the Natives of this country, in whose service I have spent the best years of my life. I have never hesitated to express openly my honest opinion when occasion required its expression, and I shall not hesitate on the present occasion. With reference, then, to the argument that Native

Native Judges and Magistrates will be influenced by race prejudices.

Magistrates or Judges will be influenced by race prejudices, I feel bound to say that it carries no weight with me.

I do not think that any of those gentlemen to whom the Bill, even in its original form, would have applied will, in the discharge of their judicial duties, be actuated by any malicious prejudice against Englishmen as a class. The supposition that they would be so actuated has been strongly repudiated from all parts of India, and I, for one, accept this repudiation of prejudice. But some of those who deny any bias from race prejudice against Englishmen have said that Native Magistrates will deal with English offenders more leniently than Magistrates of their own race and country. Many persons have also urged that if Englishmen intimate with the European district authorities were charged with any of those pretty offences which Magistrates would have jurisdiction to try, no Native Magistrate would venture to convict. That both defects would be found, at least at first, I think, very probable; and if they continued, they would furnish an argument against the Bill, inasmuch as it is not desirable that European offenders should enjoy any greater immunity from punishment than offenders of any other race or country. In connection with this argument I have pleasure in repeating what I have said on other occasions, namely, that Native judicial officers as a body discharge their duties with zeal, care, and efficiency, which abundantly justify the experiment that was made in appointing them to discharge those functions. With them, as with us, there are many and various causes which create integrity and secure the upright discharge of duty. The fear of punishment, the apprehension of loss of office and consequent social

* There is, however, a view which has not been put forward (so far as I can find), and which may deserve consideration. The Nizamat, or power of administering criminal justice and inflicting punishment, has in India been regarded by the people as the symbol of sovereignty. Is it politically expedient to give Natives this power, and over ourselves?

disgrace, innate morality, religious influence, all these contribute, each in a greater or less degree, to keep men in the path of duty. I do not care to analyse very closely which of these causes is more or less efficacious in the case of our Native judicial officers. I am content to say, as after three-and-twenty years' experience, I am able to say, and have pleasure in saying, that their discharge of their functions is satisfactory and creditable to them as a body.

Section 75. IV. The next argument is, that Natives are aliens in religion,

VI. Natives being aliens in religion are less competent to administer justice to Christians.

and therefore less competent to administer justice to Christian English men and women. This objection is not without force, though its application is not general. There may be cases in which a Native Magistrate, not himself a Christian, would be incapable of understanding the conduct and motives of the parties concerned; and, so far as such cases are concerned, the objection would apply. It has been a principle of our policy to leave all the races of this country unmolested in the exercise of their own religions, and one outcome of this policy is that religious bigotry and intolerance have been minimized. At the same time I think it impossible to overlook the value of the Christian religion as a system of education. It inculcates high moral precepts and purity of life and manners, such as no other religion in the world has ever taught men to cultivate and practise. It is impossible for any of us to say how much of our upright purpose, our feeling of honour, our desire for fair play, our sympathy for the weak, our indignation at oppression, we owe to the teachings of religion which our childhood received from a mother's lips. The highest ethics were taught in the schools of ancient Greece, but that perfect system, which Pagan philosophy failing to find out dedicated an altar "To the Unknown God," was given to the world in the doctrines of Christianity. And here I desire to speak with all humility. I believe there are many Natives of this country whose simple and blameless lives are a reproach to many professing Christians; and I know that our national life and the lives of us as individuals fall short of that high exemplar which we are instructed to imitate. But we may say with irreproachable pride that in the East* we have acquired a character for justice and fair play; and who will estimate how much this national character owes to the influence of a religion which teaches that justice is one of the highest attributes of a Deity, whose every perfection it is made our highest human aim to imitate.

Section 76. VII. The next argument is that the social customs of the Natives are different from those of Englishmen; that their manners and habits in private life, especially as regards women, are wholly diverse; and that Natives, being from this cause incapable of understanding the conduct

VII. Social customs of Natives and Europeans essentially different.

and motives of Englishmen, are unfitted to administer justice to them. The truth of this argument is admitted by those who nevertheless contend that such Natives as obtained admission to the Civil Service by competition in England have in this way had some years' experience of English life, and have had an opportunity of acquiring this particular knowledge and experience. This is no doubt a partial, but it is a very partial answer to the objection, and I doubt if it is any answer at all to that portion of the argument which is concerned with European females. As regards the statutory civilians, no answer has been attempted, and none appears to be possible.

Section 77. VIII. The *eighth* argument is that Natives are less capable than Englishmen of dealing with special cases which involve mechanical details and the like, such for example as railway cases. This argument has been advanced in the Memorial of the employés of the East Indian Railway

* The Charter of the 13 Geo. I. has the following recital:—"Whereas the East India Company have, by a strict and equal distribution of justice, very much encouraged, not only our own subjects, but likewise the subjects of other provinces, and the natives of the adjacent countries to resort to and settle in the said towns, factories, and places, especially in Calcutta, Madras, and Bombay."

(see page 12 of the "Supplement to the Gazette"), and I am bound to say that it appears to me to be deserving of much consideration, and this for reasons which some years ago I stated at length upon another and a different occasion. In a Note on the Code of

Native less capable of dealing with cases involving mechanical details.

Civil Procedure, speaking of the great difficulty of giving practical effect to

the rules which the Legislature had committed to writing for the guidance of the Civil Courts, I said in 1875 :—"The training and education (I use the word in its broadest sense) of a youth in this country are for many reasons very different from those of a youth in England. A vigorous English boy soon learns to use his own hands, doing for his amusement what in this country is regarded as manual labour and degrading. Growing up in a busy country, amidst busy men and women, with business of almost every description which science and invention have brought into the world going on round about him, he inquires, and he understands, and he learns as he grows. Much of what he reads in books explains and is explained by what he sees in the world about him. The practical thus largely enters into his education. He acquires an aptness, a readiness to understand, and to apply what he has understood and learned. His mind as well as his body has hands.* Now all this is just the reverse with the respectable youth in this country. He puts his hands to nothing, and he loses a vast fund of ideas, which are to be acquired only by one of the most important of the five senses.† He belongs, perhaps, to a caste which has no connection with business, and consequently knows nothing of business habits. The practical element has thus no connection with his early associations. It is decided to prepare him for Government employment, for the only opening which affords the prospect of a career, while the expense, thanks to the bounty of the ruling power, is inconsiderable. He rapidly imbibes

Antecedents and training of the Native judicial officers.

"the knowledge imparted to him at a State academy, presided over by English masters, who bring all their practical skill and experience to bear upon educating him. If gifted with natural ability, his progress is rapid, for within or without there is nothing to distract his full attention from the ideas received through the particular senses which are called into abnormal activity. He passes successfully through the University, and obtains his B.L. degree, and is duly enrolled as a pleader. He looks in at the Appellate Side of the High Court, and then sits for a few months or perhaps a year or two in a district Court, where few or no original cases are tried. Without perhaps ever having pleaded a case, certainly without having seen enough of work to give him any practical experience, he is appointed to be a Munsif, and is for the first time in his life brought face to face with practical work. He is perhaps posted to an out-station where there is no one who can even approach his proficiency in book learning, and where the local sub-inspector of police is probably the other most respectable resident. With a mind enlarged and improved with such education as books can give, and stored with a considerable amount of undigested learning, which he has not been taught to turn to practical account, furnished with the back numbers of the 'Weekly Reporter,' or, as a substitute, with the marginal notes collected therefrom with scientific disregard of arrangement in Cowell's Digest—with a fair knowledge of substantive legal principles, but wholly ignorant of the practice of the forum—with a reasonable share of self-confidence, and a just consciousness of superiority to those around him, he takes his seat to administer justice and commences his judicial career."

* I hope this sentence will not appear too far-fetched. Every one knows what is meant by a "handy" person. A foreman mechanic will tell a blundering workman that he has got "no hands on him," meaning that he cannot use them with dexterity, and this very word also runs in the same groove of ideas.

† It might be said of some Native youths that they have but four senses. I have often been struck in hearing appeals with the inaptness of a Munsif to grasp the facts of a case which involves any mechanical details, such for example as an action for damages for work unskillfully executed; and a similar though less degree of capacity is observable when a case turns upon a course of business or similar practical point. A Munsiff has occasionally to build or repair his own kachahri, or court house, and the result general shows an imperception of simple practical details.

Section 78. "Unacquainted with any accurate system of conducting the business of a Court, and having no fund of knowledge to draw upon for his guidance, he learns *ex necessitate* the way in which things have always been done in that particular Munsifi from the sarrishtadar, who has a thorough acquaintance therewith, and at the same time displays a becoming and respectful appreciation of the legal attainments of his superior, and is most careful that the letters B.A. and B.L. be never omitted after his name

The course of his experience. in the most ordinary communication or rubakari. Where the Code of Civil Procedure is explicit, and does not agree with the teachings of the sarrishtadar, the Munsif has no hesitation in asserting his superior knowledge, which is at once accepted as the teaching of a pundit; but where the Code is silent, the tradition of the office and the experience of the sarrishtadar, supported by the testimony of the amla and backed up by the local vakils and mukhtars, furnish instruction, which he dare not reject, more especially as he has nothing of his own to put in its place, and has no other source of guidance. Impressed it may be with a certain feeling of inferiority in his knowledge of these matters, and feeling the risk of experiments in the dark, which may compromise him with the District Judge (and of this danger his monitor is ready with many instances), he turns with relief to that portion of his work in which he feels at home, and his judgments grow more elaborate and display a still more comprehensive knowledge of the 'Weekly Reporter.' And so the practice of the Court and the business of the Court continues to run in the old groove. As the Munsif grows older and gets more experience he begins to see things in a different light, and at length perhaps it dawns upon him that no amount of law in a judgment will do justice unless it be applied to facts carefully and accurately ascertained, and that the system of conducting the business of a Court very largely influences the results to those who have to resort to it. But it is a long time before he gets over the tendencies of his first training, and when this high knowledge come to him, he is a Munsif at some sadr station, or perhaps an acting Subordinate Judge, and the Mofussil Munsifi remains all unaffected and unimproved by the improvement of the individual. It may be that he never does get over these tendencies, and that the habit of avoiding the more laborious details and doing as much work as possible by mere writing (rendered still easier by practice) finds a confirmation in the natural inclination to ease which sedentary occupation and increasing years tend to encourage, and which, according to Oriental ideas, is one of the legitimate enjoyments of superior position."*

* In the same paper I made the following observations:—"The improvement in the *judicial* part of the work of Native Judges within the last ten or fifteen years is universally acknowledged; but there has not been an equal improvement in the performance of the *executive* portion of their duties. In fact, it is *here* that the Native Judge is deficient, naturally deficient, I believe. A certain amount of executive or administrative capacity is necessary to conduct the general business of any Court successfully. The energy and practical business habits, which are essential to this capacity, are not indigenous in the Native character (I speak more especially of the lower provinces of Bengal), and are not likely to be ingrafted therein by any training which a Munsif can get before he is promoted to the bench. There is no physical vigour in his college life, and his practice at the bar (if indeed he has had any) is not sufficient to teach him habits of business. One of the greatest objections against the competition system of recruiting the Covenanted Service has been that it would give mere bookworms, void of physical energy. Without saying how far the loss has been compensated by gain in other directions, in which, perhaps, the modern system wanted to gain something while it could afford to do with less of what it has partly lost, I think it may be admitted that there has been some loss of physical energy. Yet here innate race proclivity supplied a strong counterpoise to the influences of sedentary reading and occupation. When these proclivities and influences both tend in the same direction, there is nothing to form that practical capacity which is necessary to the efficient discharge of executive functions. Again, the Native Judge is too commonly deficient in moral courage, and will shrink from enforcing the strict letter of the Code in the face of the determined opposition of the vakils and mukhtars of his Court. On more than one occasion, when I have pointed out to a Munsif the necessity of following the strict rule laid down by the law, he has told me his apprehension of getting a *bad-nam* or bad name with this class, remarking that we Europeans can be strict because we do not care for this sort of thing. There can be no doubt that the isolated position of a Munsif at an out-station, where he has no immediate support, is not calculated to remove this difficulty. A further obstacle to observation of the strict rule is to be found in the peculiar conformation of the Oriental mind, to which the idea of autocratic power is innate and familiar, while that of constitutional authority, exercised according to fixed rules and principles, is exotic. A Munsif is

Section 79. IX. The *ninth* argument is that Europeans have no confidence

IX. Europeans have not confidence in Natives. in Natives, and should not, therefore, be required to submit to their jurisdiction. Now, this is a statement of a

fact which cannot be controverted, and no Act of Parliament or of the Legislature of India will create that confidence until in the natural course of things it comes into existence. It has been stated that it is a very common practice for Native suitors to petition to have their cases heard by a European instead of a Native judicial officer. In my own experience innumerable such instances have occurred, and those transfers were asked for in cases in which I had not the smallest possible doubt of the integrity of the Native judicial officer in whom their own countrymen had no confidence. It is a curious illustration of this argument that the partiality of the very gentleman whose letter to the Bengal Government has originated the whole discussion was, within the year, impugned by his own countrymen in a case which occupied the attention of the High Court for more than a single day. I stated on that occasion from the bench, and I have much pleasure in repeating, that no ground was shown for supposing that the Magistrate was actuated otherwise than by a proper sense of duty in all that he did. It may, however, be said that, if Natives do not trust one another, it is not reasonable to ask Europeans to trust them. The fairest way, however, of dealing with the argument is, admitting the fact that Englishmen have not confidence in Native judicial officers, to allow it a reasonable consideration, bearing in mind that the argument in this form is a proper one to use, seeing that the privilege which it is directed to maintain is that of the accused, not that of the Judge.

Section 80. X. The next argument is that Natives are not naturally as independent as Englishmen, and will therefore be much more susceptible to disturbing influences. Many of them, it is said, are subject to caste prejudices; and those of them, who are themselves free from such prejudices,

X. Natives are not as independent as Englishmen.

are swayed by the opinions of their less enlightened caste fellows. Native judicial officers, it is further said, are readily influenced by the Native press, which, where Europeans are concerned, adopts a tone notoriously wanting in impartiality. So long as there are no disturbing influences, Native judicial officers get on very well; but I feel bound to say, and I speak with reference to Bengal only, in which province my experience has been obtained, that when such disturbing influences arise, they are wanting in the moral courage which is a natural part of the English character. I have present to my mind, as I write, an instance in which a Native judicial officer, who was in my opinion doing his duty, was virulently assailed by a Native paper. He came to me and besought me with tears to have him transferred. With some years' experience of judicial work and with all the educational advantages that the Calcutta University could bestow, this gentleman was in a state of mind which absolutely unfitted him for the performance of any judicial duty.

Section 81. XI. The *eleventh* argument is that Natives have not rectitude of character; not regarding falsehood as Englishmen regard it, they are less capable of discerning the truth, and are therefore less fitted to administer justice. I do not think that this argument has any force with reference to the class of men who could be entrusted with jurisdiction under the Bill.

XI. Natives are wanting in truth and rectitude of character.

In connection with the subject, however, and to give those who have not had experience of judicial work in India, some idea of the peculiar difficulties which attend the administration of justice in the country, I reproduce here some remarks which I made and published* years ago:—"There would appear to be an opinion pretty generally

"daily told by his pleaders (and there is less flattery in it than might be supposed, they say what is 'is in thorough consonance with their ideas) that he has full power to do as he likes, and that he 'is the lord, if not of the whole country, at least of the whole Munsifi. It cannot be surprising that the idea daily instilled produces some effect, and that he is led to exercise a discretion where 'he has none to exercise."

* See Introduction to my work on "Evidence."

“prevalent* that witnesses in India are more mendacious than witnesses in other countries; and it has been repeatedly stated that Judges in India have a far more difficult task to perform than Judges in England, in consequence of the untruthful nature of the evidence with which they have to deal. Some persons have even gone so far as to say that while the presumption in England is that witnesses tell the truth, the presumption in India ought to be that they lie.* In the case of *Rangama v. Atchama*, before the Privy Council, on the 29th February 1848, their Lordships observed as follows:—‘These instruments are produced, and the facts tending to this conclusion are sworn to by a vast number of witnesses. There appears to us to be no objection to this testimony

Prevalence of perjury and forgery in Indian cases. “beyond the observation which may be made on all Hindu testimony, that

“perjury and forgery are so extensively prevalent in India that little reliance can be placed on it.’ It would be possible to quote from other judgments,† as well of the Privy Council as of the highest Courts in India, passages in which the great prevalence of perjury and forgery is admitted and lamented; but it is not within either the author’s wish or the scope of his present subject to exaggerate the reproach of this particular immorality by multiplying proofs of its existence. At the same time, to make no allusion whatever to the evil would be inconsistent with the design of the present remarks, which are intended more especially to guide those who require guidance. It will then be sufficient to say that while on the one hand it would be a gross slander to predicate of all the Natives of India, as of the Cretans, that they are liars,‡ it would, on the other hand, be misleading to the young judicial functionary to tell him that he may safely look for as much truth in an Indian as in an English witness box.”

Section 82. “During the last half century education has been gradually bringing forth fruit; and one of its Some causes of the want of truth in India. “best fruits has been an increasing regard for truth among those classes who have had the benefits of edu-

* “Thus it has been justly observed, that a propensity to lying has been always, more or less, a peculiar feature in the character of an enslaved people. Accustomed to oppression of every kind, and to be called upon to render strict account for every trifle done, not according to the rules of justice, but as the caprice of their masters may suggest, it is little to be wondered at if a lie is often resorted to as a supposed refuge from punishment, and that thus an habitual disregard is engendered.’ This passage is cited as accounting in some measure for the lamentable neglect of truth which is evinced by most of the nations of India, by the subjects of the Czar, and by many of the peasantry of Ireland.”—Taylor on Evidence, Vol. 1, Section 45.

† In *Wise v. Sandalunissa* (11 Moo. Ind. Ap. 177), their Lordships said on the 25th February 1867:—“In a Native case it is not uncommon to find a true case placed on a false foundation, and supported in part by false evidence. It not unfrequently happens that each case, that of the claim and that of the defence, has to struggle through difficulties in which wicked and foolish managers involve it by fabrication of evidence and subordination or tutoring of witnesses.

‡ The subject was debated some years ago both in the Chamber of the Legislative Council and in the newspapers in connection with the Bill which afterwards became “The Oaths Act, 1873.” The then Lieutenant Governor of Bengal (Mr. George Campbell) is reported to have thus expressed himself in Council:—“Dealing as they were with a peculiar people, with whom the speaking of truth was not in any way the custom, he felt that the means which were available for getting at the truth were defective. He would go back and say one or two words in respect to the expressions which had fallen from his honourable friend Mr.—, because he wished to put himself right with the Council and with the Natives of the country in a very important matter. Mr.— said that His Honour’s belief was that the Natives were, above all men, liars. His Honour wished most distinctly and completely to deny that that was his opinion. Although he had taken a logical view of the matter in saying that truth was not estimated by the majority of the Natives as a virtue, he was not one of those who held exaggerated ideas in regard to the untruthfulness of the Natives. He believed he was one of those who held the best opinion of the Natives. He believed that they had many virtues, and that many of them spoke the truth in an honourable way; but he did think that truth was considered by them as an honourable virtue to the same extent that it was so considered by Englishmen. He had not heard, in the various discussions that had taken place on the subject, that any one had contradicted him on that point. His argument, rather, was, not that the Native was above all men liars, but, rather, that lying was natural to mankind, and that truth was a peculiar virtue, which was only developed in certain civilized countries. He thought that the Natives were on the same platform and parallel with most of the world in regard to the speaking of truth. He thought he was not doing any injustice to the people amongst whom he had spent his life in saying that truth, as truth, was not regarded as a virtue amongst them to the extent that it was regarded amongst some of the people of Western Europe.”—“Proceedings of the Legislative Council,” 13th April 1872.

“ cation.* But no fruit has been produced where no seed has been sown,
 “ and the great mass of the population, including more especially the lower
 “ classes, do not make a habit of speaking the truth, or regard falsehood with
 “ feelings of shame or abhorrence. Respectable Natives do not as readily
 “ and willingly as Englishmen attend a court of justice to give evidence.
 “ Even in their own cases, where they have personal knowledge of the facts,
 “ they prefer calling or sending their servants or dependents to depose to
 “ them; and such persons are often more zealous for the success of a cause,
 “ the conduct of which is to a certain extent in their hands, than for truth.
 “ Again, the feeling of revenge, which is so strong in the breast of the
 “ Oriental, is perpetually suggesting new ways of achieving that vengeance,
 “ which is almost as dear as life; and, in these days of law and order, a false
 “ case, by which a man may be deprived of his paternal lands or sold out of
 “ house and home, or even consigned to the walls of the criminal jail, is a
 “ common device with the Native for obtaining his desire upon his enemy.
 “ Then, in India, every man has his own caste, separate profession, and occu-
 “ pation, and as *thugs* take to murder, and *dakaitis* to robbery, and *dancing*
 “ *girls* follow prostitution, so other members of the least moral portion of the
 “ community devote themselves to perjury and forgery, and are willing to
 “ hire their services to those who may require them. Just as an unscrupulous
 “ Italian will employ a professional assassin to remove his adversary from his
 “ path, so an unscrupulous Native of India will employ a professional
 “ perjurer or forger to work out his particular scheme of vengeance, and the
 “ man who will not hesitate to pay the wages of this iniquity will occasionally
 “ himself scruple to forswear himself. It would, however, be a great mistake
 “ to suppose that *all* Natives of India are addicted to these vices, in which
 “ *some* Natives indulge, and for which *some* districts are notorious. The
 “ upper and more educated classes are as free from them as the same classes
 “ in other countries of equal civilization, and they regret their existence
 “ among their less enlightened countrymen.” This lengthy extract will show
 the difficulties and dangers that justice has to contend with in India, thus
 furnishing a commentary on the nineteenth argument (*see post*, Section 88);
 it will show some of the causes which create these dangers; and it will show
 that I, as an individual, expect falsehood to decrease, and truth and rectitude
 to increase as education improves the masses. • •

Section 83. XII. It is next said that there is no real equality amongst

XII. No real equality amongst Natives,
 who are therefore unfitted to administer equal
 justice.

Natives, as is shown by the nature of
 their domestic and social institutions;
 that their system of caste does not
 admit of any such equality; that the
 very idea of equality has come to be regarded by a vast body of the popu-
 lation as a great sin against the divine inheritance of birth; and that men
 who are rooted and grounded in such opinions are unfitted to administer a
 law before whom all men are theoretically equal. I am not much impressed
 by the force of this argument in connection with the present question. There
 are in all societies inequalities, and I doubt if the inequalities produced in
 India by caste are greater, or involve more serious consequences, than those
 which in other countries are created by rank, or riches, or education. This
 is the last of the personal arguments directed against the fitness of the
 Natives to exercise the proposed jurisdiction—arguments unpleasant to deal
 with, and to be avoided, if possible, as tending to wound race susceptibilities

* One of the best fruits of education (using the term in its widest sense) is to make truth re-
 spected and falsehood contemned. Wherever ignorance has prevailed, in the West or in the East,
 falsehood and perjury have flourished. Mr. Hallam, after noticing the prevailing ignorance of the
 middle ages, proceeds to describe the degradation of morals. His description contains the following
 passage:—“One crime, as more universal and characteristic than others, may be particularly
 “ noticed. All writers agree in the prevalence of judicial perjury.”—“Middle Ages,” Chap. IX.,
 Part I. Sir James Stephen says:—“According to my observation, the power to tell the truth,
 “ which implies accurate observation, knowledge of the relative importance of facts, and power of
 “ description, properly proportioned to each other, is much less common than people usually sup-
 “ pose it to be. It is extremely difficult for an untrained person not to mix up inference and
 “ assertion. It is also difficult for such persons to distinguish between what they themselves saw
 “ and heard and what they were told by others, unless their attention is specially directed to the
 “ distinction.”—“Introduction to Indian Evidence Act,” p. 44, note.

and national feelings. One of the strongest objections to the Bill lies, probably, in the fact of its having led to the use of these arguments on either side.

Section 84. XIII. The *thirteenth* argument is that, as Englishmen have always enjoyed the privilege of being tried by their own countrymen, it lies upon those who seek to take that right away to make out a case for its abolition. This clearly is a fair argument, and there seems to be a pretty general *consensus* of opinion that no such case has been made out.

XIV. The *fourteenth* argument is that, while the privilege is prized by all Englishmen, and is to them a real privilege, its removal can confer a gratification upon an inconsiderably small number of Natives. This also is a fair argument. There can be no doubt that Englishmen in India, who form a considerable class in the community, value the privilege as part of their birthright, and that its abolition would be keenly felt by every one of them, while the gratification arising from the exercise of a new power would be

limited to the very small number of Natives who would exercise it. Then, again, men feel more keenly the loss of what they have always had, than the

non-acquisition of what they have never had. A curious illustration of the present argument is to be found in a subject which is periodically brought forward by the Indian press. It is constantly urged that the members of the Indian Governments ought not to reside at hill stations during the hot weather and rains. The opponents of the annual migration to the hills would be entitled to be heard if they could show either that the residence of the members of the Government at a hill station made it hotter for other public officers who have to remain at their posts in the plains, or that the work of the Government must be conducted less efficiently in the hills. Now, it is supposed that they have not established either of these propositions, and, therefore, they have not been listened to, it being generally considered that the real ground of their objection to the residence of a certain class in the hills lies in the fact that they do not themselves enjoy a similar advantage. It may be said that the Native's objection to the Englishman's privilege may be disposed of in a similar way.

Section 85. XV. The *fifteenth* argument is that the right of Englishmen to be tried by their own countrymen is a portion of their personal law to which they can fairly claim to be entitled, inasmuch as other races in India have

similarly been allowed to retain portions of their personal law. It may very reasonably be contended that Englishmen here ask only the same consideration for themselves which has been shown to Hindus, Mahomedans, Sikhs, Parsees, Budhists, Jains, and other classes, and that this consideration may well be shown them even by a Government whose professed policy is to deal with all races alike. On this point I have already said so much that I shall not further enlarge.

XVI. The *sixteenth* argument is that the proposed measure, if it become law, will prevent the introduction of English capital and enterprise in the country. I do not think that this effect will immediately and directly follow,

though it is quite possible to suppose the occurrence of a case which would render Englishmen indisposed to accept employment in out of the way places in the Mofussil. It may also be fairly said that, while in the days of the Company, when Englishmen were not allowed as a rule to enter the country, the Government were, nevertheless, most careful to secure their personal law to those in whose favour an exception was made, now, when the Government has not only admitted but has encouraged and invited them to come and bring their capital and enterprise with them, it is not reasonable to diminish their privileges, or take away any portion of their personal law

in which, whether rightly or wrongly, they see a means of security and protection, and on the faith of the enjoyment of which many of them have responded to the invitation given them.

Section 86. XVII. The *seventeenth* argument, namely, that the Bill, if passed into law, will inflict unmerited disgrace

XVII. The Bill, if passed, will inflict unmerited disgrace on Englishwomen.

upon Englishwomen, is one which deserves serious consideration at the hands of Englishmen. This argument is thus put in the memorial of British subjects:—"So great is the contempt in which the Mahomedan and Hindu Natives of India hold the female sex, that an Englishwoman brought before a Judge of either of these races to be tried for a criminal offence would be thereby subjected to a special indignity of the most galling kind, and one to which it would be in a high degree inhuman, unjust, and impolitic to expose her. A knowledge of this circumstance would furnish a dangerous temptation to Native dependents and others to persecute Englishwomen with false charges for the purposes of extortion and intimidation." The strength of this language shows a real apprehension in the minds of those who use it, and it is to be borne in mind that, even where innocence is established as the ultimate result, a severe and unmerited punishment will have been inflicted.

Section 87. XVIII. The *eighteenth* argument is that the measure, if proceeded with, will create strained relations

XVIII. Strained relations and bitterness of feeling between the two races will be the result of the Bill, if passed.

and bitterness of feeling between the two races, and that this is a result which, for political and other reasons, ought by all means to be avoided. I am afraid there can be no doubt that this result will follow; and enlightened and educated men of both races must equally regret such a result, and equally desire to see it obviated. It has been said that a similar result was predicted as certain to follow from the Act of 1836, which gave Natives jurisdiction over Englishmen in civil cases, that time showed the prediction to be a mistake, and that in the present case also it will be found to be a mistake. I think, however, that the two cases are by no means analogous. A civil case is concerned with property alone, but in a criminal case, not property only, but liberty, may be involved. Under the system which exists in India, the decree of a Court of First Instance in a civil case is liable to be reversed or altered, and it does not necessarily entail any immediate consequences, as execution can be stayed pending appeal. The proceedings in the Mofussil Court of Original Jurisdiction are therefore regarded merely as a preliminary stage in a litigation, which can in most cases be carried to the High Court, and in some to the Privy Council. The criminal Judge on the other hand can arrest before trial, and in case of conviction execution follows immediately; this execution involving, it may be, loss of liberty—imprisonment in a climate in which imprisonment is a peculiarly terrible punishment to an Englishman.

Section 88. XIX. The next argument is based upon the danger to

XIX. Danger to Englishmen from false cases, if Bill become law.

English men and women that will become possible from false cases, if jurisdiction be given to Natives. That this danger is a very real one, has been admitted by those who support the Bill. The extent of the danger may be estimated from the fact that, in 1882, 850 persons were charged in the Lower Provinces of Bengal with giving false evidence, and in the same year 2,970 persons were charged with bringing false cases or other offences against justice. A Native Magistrate from his deficient knowledge of English habits and manners would be less likely than an Englishman to see improbabilities and absurdities demonstrative of falsehood; and an accused Englishman, ignorant of the language in which his accuser and his witnesses deposed, would be unable to detect them and point them out to the Magistrate.

Section 89. XX. Then it is said, and this argument comes from Assam

XX. The necessary appliances for giving effect to the measure either non-existent or defective.

and other places, that the condition of the gaols, police and other necessary appliances for the administration of criminal justice are in many parts of

the country in such a condition as either to render it difficult to give operation to such an Act, if passed, or to involve the infliction of great hardship in doing so. This argument undoubtedly deserves some consideration.

XXI. The *twenty-first* argument is that in the natural course of events no necessity has arisen for any immediate change in the law. This argument has been advanced from many quarters, and it is not easy to deny its truth and force.

XXII. The *twenty-second* argument is that even admitting the measure to be on other grounds desirable, it is premature, inasmuch as the time has not yet come for giving Natives jurisdiction over European British subjects. So far as regarded the Bill in its original shape, this argument was a very strong one; as affecting the measure in its modified shape, it has less force. When we consider the very strong feeling, and the unfortunate discussion which have been excited, it may well seem that the measure, in any shape, is as premature at the present moment as it would have been in 1872. Then the change in the law which first gave Mofussil Judges and Magistrates a jurisdiction over British subjects, beyond that conferred by the 53 Geo. III., cap. 155, sect. 105, was made in 1872—only eleven years ago—and it may be said that sufficient time has not since elapsed to justify another onward step; that the progress of eleven years, a period less than half a generation, has not fitted Natives to exercise a jurisdiction for which they were held unfit on that occasion.

Section 90. XXIII. The *twenty-third* argument is a fair and reasonable one. The original intention was that the Indian Codes should be recast at intervals of some ten years or so, and it is for many reasons undesirable that the law once settled should be disturbed during these intervals except upon grave or urgent necessity. No such necessity has been shown to have arisen in the case under discussion, and, as the revised Code came into operation only a year ago, it is inexpedient that its provisions should be again altered within so very short a period.

XXIV. The *twenty-fourth* argument is that the measure involves a breach of an assurance impliedly given in 1872, that in those cases, in which the right of trial by jury before a High Court was taken away, Englishmen would, by way of compensation, be allowed the right of trial by their own countrymen in the Mofussil. This argument has been advanced by the distinguished jurist who was the Legal Member of Council in 1872, and requires no additional observation from me.

Section 91. I have stated, as fairly as I have been able, the arguments for and against the measure; and the conclusion to which I am led, upon an examination of these arguments is, that if those in favour of the Bill can be supposed to have established a *prima facie* case for its being carried into law even in its modified form, that case has been effectually rebutted by those reasonable arguments which may fairly be advanced against the measure. In other words, I think that, upon a balance of the arguments on either side, any attempt to make European British subjects compulsorily subject to the jurisdiction of Native Magistrates should be at present abandoned.

Section 92. There is, however, a course open to Government, which I would gladly see taken as a reasonable compromise suitable to the occasion. I would allow the European British subject to be tried by any Native Magistrate of the first class, if, having been duly apprised of his right to be tried by one of his own countrymen, he deliberately waived that right and consented to be tried by the Native

Magistrate, before whom he was brought by summons or warrant issued in the usual course of procedure. It has been said on the other side of India and elsewhere that, if Europeans were allowed their own option, they would seldom object to be tried by Natives. I think this is a fair challenge, and it at once indicates a form of compromise which may well be accepted without doing violence to the feelings of any class. I have already shown in this paper (*see ante*, Sections 39, 41) that *consent* at least in two instances formed the basis of criminal or quasi-criminal jurisdiction over European British subjects* and the suggested solution has thus the advantage of being based upon precedent. Further, the maxim *Volenti injuria non fit* may be used in its support. If in the course of years it is found as matter of experience that European British subjects have no objection to be tried by Native Magistrates or have acquired sufficient confidence in them to accept their jurisdiction, the partition of privilege, which the natural progress of things will have rendered useless, may then be removed without objection and without danger.

Section 93. With reference to the amended power of transfer which it is proposed as part of the modified measure to give to the High Court, I have no expectation that this provision will remove any single objection that has been urged against the measure. The present Code empowers the High Court to transfer a criminal case to itself or any other Criminal Court, when it is made to appear—

No power of transfer in the High Court will remove objections to the principle of the measure.

- (a) That a fair and impartial inquiry or trial cannot be had in any Subordinate Criminal Court; or
- (b) That some question of law of unusual difficulty is likely to arise; or
- (c) That a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or
- (d) That an order under this section will tend to the general convenience of the parties or their witnesses.

It is proposed to add a fifth sub-section, viz. :—

“That it is expedient for the ends of justice.”

The expediency contemplated by this sub-section will, in every case in which it is sought to have the case of an Englishman transferred from the Court of a Native Magistrate, resolve itself into some one of the arguments which have been advanced against the Bill, and it will be difficult for the High Court to direct a transfer without accepting, in the case of a particular Native Magistrate, an argument which the Legislature has refused to accept when used of the class to which he belongs.

Section 94. I have now examined the whole question at great length. I have omitted no relevant fact or argument that I have been able to find. I have not willingly overstated or understated any argument for or against the measure, and, in drawing inferences and arriving at a final conclusion, I hope I have been, as I have intended to be, just to all my fellow-subjects in India, European or Native. It is possible that this paper may be read by some out of India, who, not being conversant with the antecedents of Anglo-Indian public men, or with the constitutional history of modern India, may say or think that so lengthened an examination of a subject of contemplated legislation scarcely falls within the province of judicial functions. I therefore

Two explanations.

beg leave to make two statements, one pertinent to myself, the other to mine office. I have for many years, as well since as before I became a Judge of the High Court, been asked, and have given, my opinion

* It may be said that this argument can be carried much further—so far indeed as to destroy its force altogether, for every Englishman who comes to India to follow any pursuit must be taken to consent to any jurisdiction which the Legislature provides. This cannot, however, be fairly said of the servants of the Crown, many of whom came without notice of any change in the law being possible, and some of whom have been ordered there on duty.

on measures of legislation either proposed or actually introduced into Council, and such assistance as I have been able to render has been acknowledged, on more than one occasion during the last fifteen years, in terms which made me feel that the labour of hours often snatched from rest and relaxation was appreciated. I have not devoted to the present measure more care or attention than I have on previous occasions given to measures of equal importance. This explanation is personal to myself. The following concerns mine office. From the time when the Governor General and Members of Council were Judges of the Sadr Court (*see ante*, Sections 11 and 14), that Court was charged not only with judicial functions, but also with the executive administration of justice. The Register of the Sadr Court discharged in many respects the duties of a Judicial Secretary to Government. The jurisdiction, power, and authority of the Sadr Court, as well judicial as administrative, was transmitted to the High Court by the 24 & 25 Vict., cap. 104, Section 9 of which enacts that "the High Court . . . shall have and exercise all jurisdiction and every power and "authority whatsoever in any manner vested in any of the Courts . . . "abolished under this Act." The Sadr Court was one of the Courts abolished under the Act. Under the provisions of the Codes of Civil and Criminal Procedure and "the Civil Courts Act," VI. of 1871, the High Court is expressly charged with the "superintendence" of all the Subordinate Courts, Civil and Criminal. In England the Judges are occasionally consulted by Government. That the Judges of the High Court at Calcutta are constantly consulted, not only upon questions of legislation, but upon many other matters connected with the administration of justice, is due to the fact that by the peculiar constitution of things in this country the High Court is called upon to discharge administrative functions, which do not devolve upon the Judges in England. The discharge of these functions necessarily puts them in possession of knowledge and experience which, when they are consulted, are readily placed at the disposal of Government.

C. D. FIELD.

Calcutta, 22nd December 1883.

(l)

From BANKAY BEHARY BAJPAI, Calcutta, to His Excellency the VICEROY and GOVERNOR GENERAL of INDIA (dated 2nd January 1884).

I BEG herewith to forward the following Resolutions passed at a crowded and influential meeting of the Hindustani community held in the Burra Bazar on the 31st December, at 7.30 p.m., on the subject of the Criminal Procedure Amendment Bill. I most earnestly hope, on behalf of the meeting, that they will meet with your Excellency's kind consideration.

(Signed) BANKAY BEHARY BAJPAI,
Chairman of the Meeting.

RESOLUTIONS.

1. THIS meeting strongly condemns the arrangement that has been arrived at between the Government of India and the Anglo-Indian Defence Association, with reference to the Criminal Procedure Amendment Bill, first, because it is a dangerous precedent, and secondly, because it is sure to cause miscarriage of justice in this country, and thirdly, because, instead of removing race distinctions, it aggravates them in the case of the accused.

2. This meeting is of opinion that it would be infinitely better for purposes of justice that the Bill were withdrawn rather than passed in the form of Concordat. This meeting further deprecates that by the Concordat a right is going to be conferred upon the European British-born subjects, which they did never pray for, nor which is enjoyed by them in this shape even in England, and which is so prejudicial to the cause of good government in

this country. But that should it be thought imperatively necessary to grant them such a right, the withholding of the same right from the children of the soil would be highly unjust.

• (Signed) BANKAY BEHARY BAJPAI, Chairman.

(m)

TELEGRAM from BĀBŪ NOBIN CHUNDER SEN, Barisāl, to SECRETARY to GOVERNMENT of INDIA, Legislative Department (dated 29th December 1883).

We protest against the Concordat as unworthy of Lord Ripon's Government.

(n)

MEMORIAL of BOMBAY BRANCH of EAST INDIA ASSOCIATION (dated 12th January 1884), to the Most Honourable the MARQUIS of RIPON, K.G., G.M.S.I., G.M.I.E., Viceroy and Governor General of India in Council.

The Humble Memorial of the Bombay Branch of the East India Association—

RESPECTFULLY SHEWETH,—That your memorialists have watched with much care and anxiety the progress of the Bill introduced for the purpose of amending the Code of Criminal Procedure into your Excellency's Council for making laws and regulations.

2. That your memorialists, having regard to the nature of the provisions of the Bill, have always been willing to see introduced into it any modifications of detail which might make it more generally acceptable to all sections of the population of this country, provided that the central principle of the Bill was in no wise interfered with.

3. That your memorialists have now learnt from the public prints that the Government of India have agreed to certain modifications of the Bill which your memorialists consider can hardly be expected to stand the test of experience.

4. That your memorialists are not at all unmindful of the elements of reform contained in the Bill as originally published which have not been touched by the proposed modifications. But they are nevertheless of opinion that such modifications are open to objection on the grounds, firstly, that in trying to remove one grave anomaly regarding the power of two classes of Magistrates, they tend to aggravate another not much less grave regarding the privileges of two classes of accused persons; secondly, that in removing one inconvenience, occasioned by the race or nationality of the Magistrate, they appear to introduce another which will be occasioned by the race or nationality of the jurors; thirdly, that they open the door to complications of judicial machinery which cannot be favourable to a due administration of criminal justice; and, fourthly, that they will be found in practice to be unworkable.

5. That your memorialists, although they entertain the objections enumerated in the last preceding paragraph, are still content to accept the small measure of reform which the modifications in question leave untouched; firstly, and chiefly, because they repose full confidence in the sense of justice and wisdom of your Excellency's Government; but, secondly, also because they are not unwilling that the proposed modifications should receive a trial under proper safeguards.

(Signed) V. N. MANDLIK, Chairman.

(o)

From HONORARY SECRETARY, BRANCH INDIAN ASSOCIATION, Bhajanghat, to
His Excellency the VICEROY and GOVERNOR GENERAL of INDIA (dated
12th January 1884).

I BEG to submit herewith a copy of the Resolution unanimously passed in
a meeting of 500 persons held at Bhajanghat, a village in the district of
Nadiyá, on Thursday, the 11th January, for your Excellency's perusal, and
for the kind consideration of the Select Committee.

(Signed) MOHINI MOHUN GUPTA.

RESOLUTION.

That this meeting emphatically condemns the Concordat formed between
the Government of India and the Anglo-Indian Defence Association, and is
of opinion that it is highly detrimental to the fair and impartial admini-
stration of justice in this country, and that the privileges proposed by the
Concordat, if granted to the European British subjects, should be similarly
granted to the Natives of India.

No. 14.

EXTRACT from the PROCEEDINGS of the COUNCIL of the GOVERNOR
GENERAL of INDIA assembled for the purpose of making Laws
and Regulations under the provisions of the Act of Parliament, 24 & 25
Vict., cap. 67.

The Council met at Government House on Friday, the 4th January 1884.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G.,
G.M.S.I., G.M.I.E., presiding.

His Honour the Lieutenant Governor of Bengal, C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Honourable J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Honourable T. F. Wilson, C.B., C.I.E.

The Honourable C. P. Ilbert, C.I.E.

„ „ Sir S. C. Bayley, K.C.S.I., C.I.E.

„ „ T. C. Hope, C.S.I., C.I.E.

„ „ Sir A. Colvin, K.C.M.G.

„ „ Durgá Charan Láhá.

„ „ H. J. Reynolds.

„ „ H. S. Thomas.

„ „ G. H. P. Evans.

„ „ Kristodás Pál, Raí Bahádúr, C.I.E.

„ „ Maharájá Luchmessur Singh, Bahádúr, of Darbhangá.

„ „ J. W. Quinton.

„ „ T. M. Gibbon, C.I.E.

„ „ R. Miller.

„ „ Amír Alí.

„ „ W. W. Hunter, LL.D., C.I.E.

Criminal Procedure Code, 1882, Amendment Bill.

The Honourable Mr. ILBERT moved that the Bill to amend the Code of
Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction
over European British subjects, be referred to a Select Committee consisting
of the Honourable Mr. Gibbs, the Honourable Sir A. Colvin, the Honourable
Messrs. Evans, Quinton, Gibbon, Miller, and Amír Alí, and the Mover, with
instructions to report in a week. He said :—

“ This Bill, in the form in which it is technically before the Council, and
apart from the modifications to which I shall refer later on, consists substan-

tially of two enactments, one direct, the other indirect or permissive. The first of these enactments (I refer to them in the order of their importance, not in the order in which they stand in the Bill) declares that every person who occupies the position of District Magistrate or Sessions Judge shall, as such, be qualified to exercise jurisdiction over European British subjects. The second or permissive enactment gives a discretionary power to Local Governments to confer this jurisdiction on such other persons as may be considered fit to exercise it, provided that they have already certain specified powers, and have attained to some one of certain specified ranks in the service. The Bill was framed on the assumption, which I believe to be correct, that the total number of persons whom it would be necessary to invest with these powers would not be large, and that the Local Governments might fairly be trusted to exercise a wise and sound discretion in their selection, but that it might be desirable to confine the range of selection within certain limits. The particular limits suggested were, of course, arbitrary, and were obviously open to further consideration. In so far as they operated to take away the power of appointing unofficial Europeans to be Justices of the Peace, I think that they were defective and required amendment. The Bill did not enlarge in any respect the very limited jurisdiction now exerciseable over European British subjects by Magistrates and Courts outside the Presidency towns, a jurisdiction which may be roughly compared to that exercised in England by Magistrates in petty sessions; and its practical effect has been not unfairly described by saying that it proposed to 'a very small number out of the ablest, the most experienced, and the most distinguished of our Native Magistrates and Judges with an infinitesimal jurisdiction over European British subjects.'

"Such were the provisions of the Bill as introduced; and, as to its principle, I do not know that I can describe it better than by repeating what I said on a previous occasion, namely, that it aims at the removal of a disqualification based on race, and the substitution of a qualification based on personal fitness. It is not, and was never described by any member of the Government as being, the abolition of race distinctions for judicial purposes. Such a description would have been obviously inconsistent with the retention of those privileges which Europeans now enjoy, and which we never proposed to take away. Nor, again, is it accurate to say that we have ever announced the policy that race distinctions in the bestowal of administrative offices shall cease. The Bill would not prevent, and was never intended to prevent, the element of race from being taken into consideration, among other elements, in weighing the qualifications of a Magistrate or Judge. It merely declares that the simple fact of race, or I should be more accurate in saying that the simple fact of not belonging to an artificially defined and circumscribed category of human beings, that this fact, standing alone and apart from all other considerations, shall not constitute an absolute disqualification for the performance of certain important magisterial judicial functions. The argument that race distinctions rest on certain physical and moral characteristics, and that we can neither create nor remove them by legislation, is really beside the mark. Nobody ever contended that we could. What we do contend is that, in selecting an official to hold a post, to perform duties or to exercise powers, the first thing to look to is his personal fitness; that the fact of belonging or not belonging to a particular race is not conclusive evidence of unfitness; that the line which parts fitness from unfitness does not coincide with the boundary which parts the European British subject from members of a less favoured class; and that, for the purpose of considering whether a man is or is not qualified to be a Justice of the Peace, we ought to be absolved from the necessity of ascertaining whether his parents were or were not lawfully married. In short, the principle of the Bill is the removal not of race distinctions, but of race disqualifications, which is a very different matter.

"This, then, was the Bill which was, in pursuance of the Resolution of the 9th of March last, published and circulated in the usual way for the opinions of Local Governments and others. When these opinions were received, it became our duty to consider them, and to see how far it would be possible to give effect to them consistently with our paramount duty of maintaining what His Excellency the Viceroy has referred to as 'the declared policy of the Crown and of Parliament,'—the paramount duty of observing what I

may describe as the constitutional enactments and constitutional pledges by which we are bound.

"Of those constitutional enactments and pledges, the most important for our present purpose are to be found in the Charter Act of 1833, and in the Queen's Proclamation of 1858. The Charter Act of 1833 enacts that—

" 'No Native of the said territories' (that is to say, the territories then under the government of the East India Company), 'nor any natural-born subject of Her Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said Company.'

"And the Queen's Proclamation of the 1st November 1858 says:—

" 'It is Our further will that, so far as may be, Our subjects of whatever race and creed be freely and impartially admitted to offices in Our service, the duties of which they might be qualified by their education, ability, and integrity duly to discharge.'

"Now, I read the second of these two instruments as confirming and supplementing the first. The first removes a legal obstacle by invalidating disqualifications based exclusively on religion, place of birth, descent, or colour; the second imposes a positive obligation by directing that, so far as may be, the persons whose disabilities had thus been removed not only *may*, but *shall*, be admitted freely and impartially to offices in the public service, subject only to the test of fitness.

"Of course, I do not overlook the force of the qualifying words 'so far as may be.' They justify the Government in declining to apply the general principle laid down by the Proclamation in such a manner, to such an extent, or under such circumstances as might endanger the supremacy of the British Government, impair the efficiency of the administration, or imperil the lives, liberties, or property of any class of British subjects. Thus, they are merely a qualification of a general rule; the burden of proof is on those who allege that special circumstances exist which make the general principle inapplicable.

"Now, it is the overlooking of this that appears to me to constitute a weak point in many of the arguments advanced against the Bill. For instance, His Honour the Lieutenant Governor of Bengal has urged the withdrawal of the Bill, 'in the conviction,' as he says, 'that it is not necessary for the judicial work of this country.' And the English Judges of the Calcutta High Court, in their very able Minute, have argued that, unless we can show that our proposals will tend to make the administration of justice more impartial and effectual than it is at present, the ground is cut from underneath our feet. I believe that our proposals would have that tendency, but it is unnecessary for me to press that point. All that I need say is that the line of argument which I have indicated appears to me to be based on a misconception of the point of view from which we approached, and from which I contend that we ought to approach, the subject. We start from the assumption, not that legal disabilities ought to be retained until the necessity for removing them has been proved, but that we ought to remove them unless and except so far as their retention is shown to be necessary. And the question which we had to consider in framing the Bill was whether the mode and extent of removal which we proposed would or would not interfere with the effectual and impartial administration of justice.

"Now, I can quite understand the possibility of arguing that the Charter Act or the Queen's Proclamation ought not to be construed or applied in the way in which I have contended that they ought to be construed and applied. What I find much greater difficulty in understanding is how it can be seriously argued that, in dealing with the subject, we are entitled to disregard these instruments altogether. And yet we have been told on high authority that they have no practical bearing on the question before us. We have been told that the Proclamation has no legal force whatever; that, as a ceremonial, it may have been proper; but that, in any other point of view, it is a mere expression of sentiment and opinion, worth as much as the sentiments and opinions expressed would have been without it, and no more. We have also been told that the Charter Act has no force beyond the legal effect of its words; that it has a legal value, but no other value; and that it would be absurd to suppose that Parliament can impose on any one, and in particular that it can impose on any body having legislative power, a moral obligation to take some principle as

a guide for legislation, and to embody it in definite enactments from time to time, irrespectively of all other considerations. These statements appear to me to involve a grave misapprehension, both as to the constitutional relations between the Government of the United Kingdom and the Government of this great dependency, and as to the principles of construction which ought to be applied to documents of the class to which the Charter Act and the Queen's Proclamation belong. That we have been placed under any obligation, moral or otherwise, to pass any particular enactment at any particular time, irrespectively of all considerations, is what no one has suggested. But I should have thought it was clear beyond all manner of doubt that it is within the competency both of Parliament and of the Crown to indicate in more or less general terms the line of policy which the Government of India is to adopt in respect to any particular subject, and to impose on this Government the obligation of observing that policy. Such an indication of policy is, I take it, to be found both in the Charter Act and in the Queen's Proclamation. Their general effect, as I construe them, is to lay down a clear and distinct principle for the guidance of this Government, and to leave a wide discretion as to the time, mode, and extent of applying that principle.

"And when construing such documents, I do not think that we should be justified in explaining or refining them away as a subtle Judge or Advocate would explain or refine away an inconvenient enactment. On the contrary, our duty is to place on them a broad and liberal interpretation, and to use our best endeavours to ascertain and observe their spirit as well as their letter. Of the Queen's Proclamation I will say nothing, except that, so far from treating it as a mere expression of sentiment and opinion, I regard it as one of the most solemn and formal pledges which was ever given by a Ruler to her subjects. About the Charter Act, since its meaning and object have been seriously questioned, it is, I fear, necessary that I should say something more, in order to explain the circumstances under which it was passed, the nature of the policy to which it was intended to give effect, and the mode in which effect has from time to time been given to that policy.

"At the time when the Charter Act of 1833 was passed, the independent British settler, the forerunner of the modern planter, existed only by sufferance in this country. He was regarded as an interloper, and was not allowed to reside in India except under a special license. It was well known that one of the main objects of Lord William Bentinck's policy was to alter this state of things. He was anxious to facilitate the admission of settlers into the interior, to give them the right to settle there, but to couple with that right, as a necessary and indispensable condition, the liability to be governed by the same laws and to be under the jurisdiction of the same Courts as the Natives of the country. It was in accordance with, and in furtherance of, this policy that the Charter Act of 1833 was passed. As we know, it considerably enlarged the powers of the Governor General in Council for making laws and regulations which were to be binding on all the Courts of the country, but restrained him from making any law or regulation which should empower Courts other than those chartered by the Crown to sentence British subjects or their children to death, or should abolish the Courts so chartered. And it contained the section, which I have already quoted, removing disabilities based on creed or colour.

"Now, this Act was followed by a further despatch from the Court of Directors to the Governor General in Council, explaining very fully the provisions of the measure, and conveying orders as to the mode in which effect was to be given to those provisions. The despatch to which I refer is dated the 10th December 1834, and is of such great importance as a contemporaneous and authoritative exposition of the policy of the Act, and of the way in which it was intended by its framers that it should be worked, that I shall make no apology for reading to you some of the passages which bear most directly on the position of British-born subjects under the then new law:—

"'58. With regard to British-born subjects,' says the despatch, 'when the Act says that you shall not pass laws making them capitally punishable otherwise than by the King's Courts, it does by irresistible implication authorize you to subject them in all other criminal respects, and in all civil respects whatever, to the ordinary tribunals of the country. We know not, indeed, that there is any crime for which under this clause they may not be made amenable to the

country tribunals, provided that the law, in giving those tribunals jurisdiction over the crime, shall empower them to award to it some other punishment than death.

“ ‘59. From these premises there are some practical inferences to which we must call your attention. First, we are decidedly of opinion that all British-born subjects throughout India should forthwith be subjected to the same tribunals with the Natives. It is, of course, implied in this proposition that, in the interior, they shall be subjected to the Mufassal Courts. So long as Europeans penetrating into the interior held their places purely by the tenure of sufferance, and bore in some sense the character of delegates from a foreign Power, there might be some reason for exempting them from the authority of those judicatures to which the great body of the inhabitants were subservient. But now that they are become inhabitants of India, they must share in the judicial habitudes as well as in the civil rights pertaining to that capacity, and we must conceive that their participation in both should commence at the same moment.

“ ‘60. It is not merely on principle that we arrive at this conclusion. The 85th clause of the Act to which we have before referred, after reciting that the removal of restrictions of the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage, an obligation which in our view you cannot possibly fulfil unless you render both Natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.’

“ And then in some later paragraphs the despatch goes on to comment on Section 87, the section relating to race disabilities, and what it says about that section is this :—

• “ ‘103. By Clause 87 of the Act it is provided that no person, by reason of his birth, creed, or colour, shall be disqualified from holding any office in our service.

“ ‘104. It is fitting that this important enactment should be understood, in order that its full spirit and intention may be transfused through our whole system of administration. •

“ ‘105. You will observe that its object is not to ascertain qualification, but to remove disqualification. It does not break down or derange the scheme of our Government as conducted principally through the instrumentality of our regular servants, civil and military. To do this would be to abolish or impair the rules which the Legislature has established for securing the fitness of the functionaries in whose hands the main duties of Indian administration are to be reposed—rules to which the present Act makes a material addition in the provisions relating to the College at Haileybury. But the meaning of the enactment we take to be that there shall be no governing caste in British India; that whatever tests of qualification may be adopted, distinctions of race or religion shall not be of the number; that no subject of the King, whether of Indian or British or mixed descent, shall be excluded either from the posts usually conferred on our uncovenanted servants in India, or from the Covenanted Service itself, provided he be otherwise eligible consistently with the rules, and agreeably to the conditions, observed and enacted in the one case and in the other.

“ ‘106. In the application of this principle, that which will chiefly fall to your share will be the employment of Natives, whether of the whole or the mixed blood, in official situations. So far as respects the former class, we mean Natives of the whole blood, it is hardly necessary to say that the purposes of the Legislature have, in a considerable degree, been anticipated. You well know, and indeed have in some important respects carried into effect, our desire that Natives should be admitted to places of trust as freely and extensively as a regard for the due discharge of the functions attached to such places will permit. Even judicial duties of magnitude and importance are now confided to their hands, partly no doubt from considerations of economy, but partly also on the principles of a liberal and comprehensive policy. Still a line of demarcation, to some extent in favour of the Natives, to some extent in exclusion of them, has been maintained. Certain offices are appropriated to them; from certain others they are debarred; not because these latter belong to the Covenanted

Service and the former do not belong it; but professedly on the ground that the average amount of Native qualifications can be presumed to arise to a certain limit. It is this line of demarcation which the present enactment obliterates, or rather, for which it substitutes another wholly irrespective of the distinction of races. Fitness is henceforth to be the criterion of eligibility.

"Here, then, was a sufficiently clear and distinct enunciation of the general policy which the Government of India was expected and intended to follow. On the successive steps which have been taken from time to time to give effect to that policy, I must touch very briefly. The first of those steps was the passing of Lord Macaulay's famous Black Act of 1836. With the circumstances that attended the introduction and passing of that Act all the readers of Macaulay's life are familiar. The controversy which raged around the measure resembled in many of its features the controversy which has raged around the present Bill, and particularly in the predictions which were then so confidently made, and which have been so signally falsified by the event, that, if the measure became law, India would be deserted by British capital. Lord Macaulay's Act has now for nearly 40 years maintained a peaceful and useful existence on our statute book, and I am not aware that a single British planter or merchant is a penny the worse for its existence.

"Lord Macaulay's measure applied only to the Civil Courts. But he left on record an opinion that similar legislation ought to be applied to the Criminal Courts, and in 1843 the Indian Law Commissioners submitted proposals for this purpose. These proposals were considered and commented on by the Judges of the Supreme Court and others, but no steps were taken to give legislative effect to them until 1849. In that year, Mr. Drinkwater Bethune, who was then Legal Member of Council, prepared and published with Lord Dalhousie's assent, the drafts of three Bills, one of which proposed to make all persons amenable to the criminal jurisdiction of the Company's Magistrates and Courts outside the Presidency towns, subject only to the reservation that no such Magistrates or Courts should have power to pass a sentence of death on any of Her Majesty's subjects born in England, or on the children of such subjects. There was no restriction of this jurisdiction to Justices of the Peace. The three Bills met with much opposition, and were eventually withdrawn, for reasons explained by Lord Dalhousie in a minute from which I will quote.

" 'I am most clearly of opinion,' he says in his minute of 19th April 1850, 'that the time has come when the exemption in question ought to be abolished, and that British subjects should now be brought within the jurisdiction of Criminal Courts in the Mufassal, as they have long since been brought under the jurisdiction of the Civil Courts there. But, after an anxious examination of the subject, I must declare that I am not prepared to place the British subject under the criminal law which is now administered in those Courts, or to deprive him of his privilege of being judged by English law' (not, mark, English Judges) 'until we can place him under a criminal law equally good, or at all events as good as the circumstances of India will admit of. This is very far from being the case at present. The criminal law administered in the Mufassal is in substance the Muhammadan law, modified from time to time by the regulations and expounded by the decisions of the Sudder Court.'

"Accordingly, he urges the great importance of pressing on the completion and passing of the Penal Code with such amendments as should be found necessary.

" 'I cannot,' he says, 'conceive it probable that a Code prepared by men so eminent, judged and approved by so many men of learning and experience, should appear to the Legislative Council so bad in itself, and so incapable of amendment, that they should advise its rejection altogether. If such, however, should be the case, the responsibility of the Governor General and the Legislative Council will be at an end. We have proclaimed to all India, by the publication of the draft Acts, that it is our conviction that British subjects should be placed within the jurisdiction of the Mufassal Courts, and that we have resolved so to enact. We cannot, without discredit and loss of public confidence and respect, abandon that resolution; we ought not to abandon it. There is no discredit in delaying the passing of the Act for the purpose of providing any possible guarantee by the enactment of a fitting criminal law for the liberty and property of British subjects when placed under the operation of the Act. But we must

not, by relinquishing our intentions, give others reason to believe that we have been scared from our right determination by public outcry, still less that we may have allowed ourselves to be driven from the enforcement of our conscientious conviction of what is right and necessary by difficulties which we encountered in the way. The establishment of the same criminal law generally in the Indian Empire is a wholesome measure, and it must now be accomplished.'

"In 1853 the Charter of 1833 was renewed, and by the statute passed for that purpose Her Majesty was empowered to appoint in England a new Commission to revise the work of the former Indian Law Commissioners, and to this body the Penal Code and the question of a Criminal Procedure Code, which had been so long pending, were referred. The Commissioners accordingly prepared a draft which eventually, and after undergoing various modifications, became law as the Criminal Procedure Code of 1861, and as the basis of our existing Criminal Procedure Code. By Section 5 of this draft it was proposed to enact that—

"'No person whatever shall, by reason of place of birth or by reason of descent, be in any criminal proceedings whatever excepted from the jurisdiction of any of the Criminal Courts.'

"In fact, to apply to the Criminal Courts the enactment which Lord Macaulay had applied to the Civil Courts. The Commissioners said in their notes,—

"'We assumed that the special privileges now enjoyed by European British subjects were to be abolished. In the system which we propose all classes of the community will be equally amenable to the Criminal Courts of the interior.'

"They proposed, however, to give the High Court and Sessions Court exclusive jurisdiction (1) in offences reserved in the schedule of offences appended to the Bill as triable only by such Courts; (2) in theft and receiving when the property was worth over Rs. 500; and (3) in all cases against public servants of certain classes. This last exemption, making a distinction in favour of the official classes, was obviously a weak point in the Commissioners' proposals, and was made the subject of the most effective attacks which were directed against them in the subsequent debates in the Legislative Council.

"These debates, which took place in the years 1857, 1859, and 1861, have already been referred to by my honourable friend Mr. Evans and others, and I should not be justified in occupying your time by dwelling further upon them. Suffice it to say, that they were interrupted by the mutiny; that, although Sir Barnes Peacock, in introducing the Bill, supported the principle of the section which I have quoted, and said he could not understand on what grounds it could be contended that any one class of persons should be exempt from the jurisdiction of any of the Courts of the country, yet after the mutiny he saw cause to change his mind. The Code, as it finally passed in 1861, left matters relating to the jurisdiction over European British subjects very much as they were before, except that it restricted the jurisdiction then exercised in certain cases over European British subjects in the interior by Native Magistrates and others not being Justices of the Peace. Such was the conclusion arrived at in 1861, and under the circumstances of the case, when the terrible events of the mutiny were still fresh in men's memories, when it yet remained to be seen what would be the effect of introducing English substantive law and English rules of procedure into the Criminal Courts of the interior, I do not say that it was an unreasonable, and it certainly was a very intelligible, decision.

"The Penal Code had become law in the previous year as Act XLV. of 1860, and, by the enactment of this Code and of the Procedure Code of 1861, the most forcible of the objections which had on previous occasions been urged against extending the criminal jurisdiction of Courts in the interior over European British subjects, the one objection to which Lord Dalhousie attached weight, was removed in the way in which Lord Dalhousie had contended that it ought to be removed.

"The Code of 1861 was amended in various ways by Acts passed in 1861, 1862, 1866, and 1869, and it was clear that it was susceptible of considerable improvement. Accordingly, the Secretary of State, in 1869, referred the

condition of the Code and its revision to the Law Commissioners at home, and they reported in favour of bringing all classes of persons under its provisions. This, of course, was tantamount to a recommendation that European British subjects should be brought under the jurisdiction of the Criminal Courts of the interior, to which alone the Criminal Procedure Code then applied.

"The Report to which I have referred was made in 1870, and in the same year Sir James Stephen revised and re-arranged the Code of 1861, and introduced the measure which subsequently became law as the Code of 1872. The Bill, as first introduced, did not substantially affect the jurisdiction over European British subjects, and it was only at a later stage that the amendments were introduced by which it was proposed to extend the powers of Criminal Courts in the interior over that class of Her Majesty's subjects. And it was in connexion with this proposal that the compromise, to which so much reference has been made, was entered into. There is nothing on record to show the persons with whom, or the manner in which, the compromise was arrived at, but I have no doubt that the accounts of it which have been since given by Sir James Stephen, Mr. Evans, and others are substantially accurate. It appears to have been some kind of informal arrangement or understanding to which at least some members of the Select Committee on the Bill were parties. Two things are clear about it, first, that it was not regarded as binding on the Select Committee as a whole, because one of the members of that Committee voted against the proposals which it embodied, and secondly, that the Executive Government were not a party to it, because the majority of them voted against the proposal. But I need hardly say that, even if the agreement had been as formal as it was informal, it would not have tied the hands of subsequent Governments, or have prevented them from passing such enactments as might from time to time be required in the interests of justice, good administration, and sound policy.

"Now, to a compromise, as such, in a matter of this kind, I have no manner of objection. It is reasonable enough in legislation, as in other matters, when you can't get all that you wish, to take what you can get and make the best of it. The main question is whether and how far the particular compromise arrived at is likely to produce inconvenient consequences hereafter, either by abandoning a principle which ought to be maintained, or in any other way. And, looked at from this point of view, the compromise of 1872 does appear to me to have been open to somewhat serious objections. I don't say this for the purpose of condemning the compromise, which was, as Sir John Strachey frankly admitted, open to criticisms of every kind, but for the adoption of which at that particular time there may have been strong reasons of a practical nature. But I say it rather for the purpose of showing how difficult it is to make any arrangement on a subject of this kind to which valid objections cannot be taken.

"The chief objections to which the arrangement of 1872 appear to me to have been open are three. First, that, although put forward as a compromise, an attempt was made to defend it on principle, and that the arguments by which it was so defended are unsound and fallacious. Secondly, because the form which the compromise assumed, and the grounds on which it was supported, were not wholly consistent with the principles in accordance with which we are bound to govern India. Thirdly, that it contained the seeds of practical difficulties which were certain to mature at no very distant date.

"One of the main arguments by which the compromise was supported was that in this country, as distinguished from England, personal, as opposed to territorial laws, prevail on all sorts of subjects, and that their maintenance is insisted on with the utmost pertinacity by those who are subject to them. The Muhammadan, it was said, has his personal laws, and the Hindu his. Now, it is perfectly true that we have undertaken to apply the rules of Muhammadan or Hindu law, as the case may be, to questions regarding succession, inheritance, or marriage, or caste, or any religious usage or institution. But have we ever undertaken that a Muhammadan shall be tried by a Muhammadan or a Hindu by a Hindu? And, if not, how can the argument be used to justify the disqualification of a Native for exercising jurisdiction over an Englishman?

“The whole of the argument sounds to me very much like the echo of a past controversy. There had been, not many years before 1872, a time when the Englishman and the Native of India were under different systems of criminal law, owing to the fact that the criminal law administered in the Courts of the Presidency towns was English law, whilst the criminal law administered in the Courts of the interior was in the main Muhammadan law; and, when this was the case, the Englishman might very reasonably object, and did object with great vigour, to being placed under a criminal law which was not his own. But the Penal Code of 1860 and the Criminal Procedure Code of 1861 had effaced, and it was their main object to efface, these distinctions, and by the passing of these Codes the argument based on difference of laws was deprived of all its significance.

“Very similar considerations apply to an argument which, if I remember rightly, was not used in 1872, but on which a good deal of stress has been placed since—the argument based on the fact that special tribunals for Europeans exist in countries such as Turkey, Egypt, China, and Japan. It is perfectly true that such tribunals do exist, and that we reserve to them jurisdiction over our fellow-subjects. But why? Because, with all the respect that is due to the Governments of those countries, we have not as yet sufficient confidence in their system of administration to place complete reliance on their judicial officers, who are neither appointed, removed, nor controlled by us, and because the criminal law and the criminal procedure which they administer are not in accordance with the principles observed in English Courts of law. But does any one of these considerations apply to those of Her Majesty’s Courts which are presided over by Natives of India? The Judges are appointed by us; they are removeable by us; their proceedings are subject to our control and supervision in the minutest particulars; the law which they administer is not foreign law, but English law; and the Codes in which the law is embodied are the work of English lawyers, and are, to quote Lord Dalhousie’s language, founded on the principles and instinct with the spirit of the common law of England.

“I have said that the general line of argument by which the 1872 compromise was supported does not appear to me to be wholly consistent with the principles which are laid down in the Act of 1833, and which I hold that we are bound to maintain. Do not let me be misunderstood on this point. I do not mean to suggest that there is any technical inconsistency between anything contained in the Charter Act and the Queen’s Proclamation on the one hand, and any of the provisions of the Criminal Procedure Code on the other hand. If there had been any such inconsistency, of course the latter provisions would not have been allowed to become law. But I do say that the framers of the 1872 Code sailed near the wind. To disable a man on grounds of race from performing an important part of the duties ordinarily attached to an office approaches perilously near to debarring him from holding the office, and certainly places great practical difficulties in the way of his admission to the office.

“Observe that, up to 1872, the controversy had been, not whether a European British subject should be triable by a Judge of a particular race, but whether he should be triable by a particular class of Courts—the Courts of the interior—as distinguished from the Courts of the Presidency towns; that the question of race, when it arose at all, only arose incidentally, and that it was only by indirect means that the jurisdiction of Natives over European British subjects was either limited or excluded. The legislation of 1872 gave jurisdiction to the country Courts, but expressly took it away from the Native Judges of those Courts as Natives. It removed the line by which jurisdiction over European British subjects had previously been limited, and drew it between other points. And in so doing it seems to me to have drawn the line precisely at the place where the authors of the Act of 1833 intended that it should not be drawn, and to have emphasized and accentuated the race-disabilities which it was the object of the Charter Act to remove.

“One of the most unfortunate results of the particular form which the compromise of 1872 assumed, and of the particular arguments by which it was defended, was that it attached, or at least materially helped in attaching, an entirely new meaning to that well-worn phrase, the right to trial by peers.

We have been repeatedly informed that the Englishman enjoys an undeniable and indefeasible right to be tried by a Judge or Magistrate of his own race, and that this is what is meant by the right to trial by peers which is supposed to be guaranteed by Magna Charta. Now, I do not propose to discuss the precise meaning of the famous passage which declares that no free man is to be imprisoned, and so forth, *nisi per legale iudicium parium suorum vel per legem terræ*. Those who are curious on the subject cannot do better than turn to the very instructive passage in Sir James Stephen's History of the Criminal Law of England, in which he argues that the right to trial by peers was confined to that limited class of persons who were vassals of the King's Courts, and that the only right which was guaranteed to ordinary free Englishmen was the right to trial by the law of the land, that is to say, by the ordinary course of justice. If I were disposed to approach the subject merely from an antiquarian point of view, I might say with perfect accuracy that Magna Charta has as much to do with the Bill now before us as Domesday Book has to do with the Permanent Settlement. But I do not think that great constitutional enactments such as Magna Charta, and, I may add, the Charter Act of 1833, ought to be dealt with in any such spirit. What is more to the purpose is to ascertain how they have in practice been understood and acted upon.

"It has been confidently asserted, and I find the assertion repeated over and over again in the papers relating to the Bill, that, as a matter of law, an Englishman has a constitutional right to be tried in criminal matters by a Judge of his own race, and that, as a matter of fact, this right has always been enjoyed by Englishmen settled in India. Now, I must take leave to deny both these propositions.

"As to the argument based on constitutional right, it seems to be a plant of very recent growth even in India, for in the earlier stages of the controversy the right which was supposed to be guaranteed by Magna Charta, and to be affected by such measures as those prepared by Mr. Drinkwater Bethune, was this right to trial by jury, which is a very different thing.

"And outside India, in other parts of the world inhabited by men of English race or descent, I am not aware that this argument is ever used or recognized. I have made some inquiries on the subject, and I find that in no British colony is there any distinction between Europeans and Natives with respect to the jurisdiction exerciseable over European British subjects, or persons belonging to any similar class. There is the same law for both Europeans and Native, and, if a Native is appointed to administer the law, he has exactly the same amount of jurisdiction as a European. For instance, in the neighbouring island of Ceylon, where, as in India, we have English settlers in the midst of a Native population, there are Native judicial officers qualified to exercise, and exercising, criminal jurisdiction over European British subjects. And in the colony of Hong Kong I am told that there is at least one Chinaman who has acted successfully as a Magistrate.

"That is how the matter stands outside India, and in India itself it would be easy to disprove the assertion that European British subjects have never been subject to Native criminal jurisdiction in places outside the Presidency towns. But in order to do this fully, it would be necessary to refer to a good many Acts and Regulations, with which I do not propose to weary you. Inside the Presidency towns Magistrates and Judges have never been subject to any disqualification or disability, and Natives of the country have always been eligible to be appointed, and have been freely appointed, Justices of the Peace and Presidency Magistrates, with jurisdiction over European British subjects as well as over others. So that this new-fangled theory about the meaning of trial by jury squares neither with the law nor with the facts, and I cannot help thinking that the arguments by which the 1872 compromise was helped out were mainly responsible for its invention.

"And, lastly, it appears to me that the particular compromise then entered into contained within itself the seed of future difficulties, which has since borne fruit. It is perfectly true that, if the proposal to confer jurisdiction on District Magistrates and Sessions Judges as such, the proposal which was lost by so narrow a majority, it is true that, if this proposal had been carried, its immediate practical effect would have been *nil*, because, as my honourable friend

Mr. Hunter has pointed out, at the time when the Code of 1872 became law, there were only four Native members of the Civil Service, none of whom had risen to the post of District Magistrate or Sessions Judge, and three of whom were youths of a few months' standing. But there were such men in the Service, Natives of India who had entered the Service under the statute which had founded the competitive system. Another statute had been passed for the express purpose of admitting Natives of India to posts which had been previously confined by law to the Covenanted Civil Service, and it was well known to be the settled policy of the Government of India to encourage and facilitate the admission of Natives of India to such posts. Under these statutes, and in pursuance of this policy, the numbers of the Native members of the Service has since 1872 increased from 4 to 33, and some of them have already attained to the rank of District Magistrate and Sessions Judge. Thus the question which might in 1872 have been shelved as being of mere theoretical importance has now, to quote again Mr. Hunter's language, 'acquired present and practical bearing.'

"Another circumstance has taken place since 1872 which has a direct bearing on this question, and it is a circumstance immediately connected with the passing of the Code of 1882. Before that year the criminal procedure of the Courts in the Presidency towns and the criminal procedure of the Courts outside those towns were regulated by different Acts or sets of Acts. There were the High Court Criminal Procedure Act and the Presidency Magistrates Act, applying exclusively to the Courts in the Presidency towns (or almost exclusively, for the High Court at Allahabad was an exception), and there was the Criminal Procedure Code, applying exclusively to the Courts outside these towns. In the former of these Acts there was no trace or vestige of any race disability, for a High Court Judge or a Presidency Magistrate, whatever may be his race, whether he is a European British subject or not, has jurisdiction over European British subjects, whilst in the Criminal Procedure Code there was the marked and stringent exclusion of Natives of India as such from exercising this jurisdiction.

"Now, it was felt at the time when the last Code was under discussion that the old distinction between the Presidency towns and the Mufassal, the distinction which plays so important a part in the earlier days of British Indian history, had to a great extent disappeared, and that the system of criminal procedure obtaining in all the Criminal Courts of the country could with advantage be brought under and regulated by one and the same law. Accordingly, the two sets of Acts, the Acts which ignored the race disability, and the Acts which maintained them, were brought together. The High Court Criminal Procedure Act and Presidency Magistrates Act were repealed, and the new Criminal Procedure Code was applied to the Presidency towns as well as to the Mufassal. This process naturally brought into still greater prominence what Sir Ashley Eden described as an anomaly, and made it only natural to inquire whether, when other distinctions between town and Mufassal were being removed, this distinction should not be removed also, and whether the rule of giving powers according to personal fitness should not be applied to all parts of the country.

"This was the rule which we sought to apply by the Bill which was introduced last February. We sought to apply the principles laid down by the Charter Act and Queen's Proclamation, by removing, so far as existing circumstances would admit, the distinction drawn by the Code of 1872 between European and Native Magistrates and Judges with respect to their powers over European British subjects. And we sought to apply those principles in the most cautious and guarded manner. The Bill has been written and spoken about as if it had proposed to confer on every Native Magistrate and Judge unlimited powers over every British subject, and much of the language used about the measure is intelligible on no other hypothesis. Nothing can be further from the truth. The power to be conferred was of the most limited extent, and was so fenced and hedged about by numerous restrictions in the form of powers of control, powers of supervision, powers of transfer, rights of appeal, and the like, as to render any risk of injustice practically impossible. Nor were the powers to be conferred on all Magistrates and Judges. The Bill proposed to confer them absolutely on District Magistrates and Sessions Judges only, but it empowered Local Governments in their discretion to extend the

powers to other officials belonging to certain specified classes. It thus gave to a sound principle a limited application in the first instance, and provided for its gradual extension if and as its extension should be found practicable or desirable.

"However, when the opinions on the Bill came in, we found that on the one hand fears were expressed lest the discretionary powers which we proposed to give Local Governments should be unwisely and lavishly exercised, and that on the other hand the majority of Local Governments would be unwilling to exercise them at all. Under these circumstances, we came to the conclusion that it would be better to drop a provision which had excited unnecessary apprehensions, and which was likely to remain for some time a dead letter. By so doing we gave up the attempt to apply the principle of selection by fitness in the precise manner and to the precise extent which we had originally contemplated, but we did enough to meet the immediate necessities of the case, and to maintain a principle which had been directly attacked and which it was our duty to uphold. The Bill as thus modified would enable us to give effect to the suggestion out of which these legislative proposals originated, namely, that when Native officials had risen to high and responsible posts in the public service they ought to be given equal power with their English colleagues of the same rank, and it would maintain the principle that, where personal fitness had been established, race ought not to operate as a disqualification.

"And the test of fitness which it would impose is a test to which no reasonable person could object on the ground of insufficiency. For to say that a Native of India who has been entrusted with the powers exercisable by a District Magistrate or Sessions Judge, who has risen to the position of being the chief executive officer or the chief judicial officer in an area, the average population of which in Bengal is about a million and a half, to say that such a person cannot be trusted to exercise with justice and discretion the very limited jurisdiction which is exercisable over European British subjects outside the Presidency towns, is to say that no Native of India, however long and complete may have been his training and experience, however high and responsible may be his position in the public service, is fit to exercise that jurisdiction. And that is a proposition which few will be bold enough to maintain.

"This, then, was the form to which, in deference to expressions of opinion to which we had undertaken and were bound to give the fullest consideration, we were prepared to reduce a measure originally limited in its scope. And we were prepared to furnish an additional safeguard against the possibility of any risk of injustice by increasing the facilities already provided by the law for obtaining a transfer of the proceedings, or, as it would be called in England, a change of venue, in any case where such a transfer might appear to be desirable in the interests of justice. The provisions suggested for that purpose by the Chief Justice of Madras would be available for all persons, Europeans and Natives alike.

"Such were the modifications which, as has already been announced by His Excellency the Viceroy, we were and are prepared to recommend for adoption by the Select Committee to which this Bill is to be referred. However, since that announcement was made, it has been strongly pressed upon us by persons whose opinion is entitled to great weight that, however moderate and cautious our proposals might be, yet there was a certain risk of an explosion of race feeling taking place when the new law came to be put into force. And however much we might deplore and condemn the spirit which renders such a risk possible, yet we felt it to be our duty to minimise that risk by any means which might appear to be practicable and justifiable. Accordingly, we have agreed to accept a suggestion which has been made to us with this view, and which would have the effect of slightly extending the system of trial by jury. The suggestion is that a European British subject, when brought for trial before a District Magistrate or Sessions Judge, should have the right, if he thinks fit to claim it, to be tried by a jury, such as is provided for by Section 451 of the Criminal Procedure Code, subject to two conditions; first, that no distinction is to be made between European British Magistrates and Judges; and secondly, that the punitive powers of District Magistrates over European British subjects are to be doubled, that is to say, are to be

extended to imprisonment for six months or a fine of two thousand rupees. The punitory power of other Magistrates, that is to say, the power to imprison for three months, or impose a fine of one thousand rupees, will be left untouched, and in cases tried before them the right to a jury will not be given.

“The adoption of this suggestion will maintain a complete equality between European and Indian District Magistrates and Sessions Judges, and may at the same time provide in certain cases a useful safety-valve against such a risk as that to which I have referred.

“The practical effect of adopting the suggestions will, I believe, be slight. As to trials before District Magistrates, two things must be borne in mind; first, that the total number of criminal charges against European British subjects in the Mufassal is small, and secondly, that the total number of cases of any kind tried by District Magistrates is very small indeed. From these two premises it is not difficult to draw a conclusion. As regards trials before Sessions Judges, it will be remembered that all such trials must under the existing law be either by jury or with the aid of assessors; that any Local Government may by executive order direct that the trial of all offences, or of any particular class of offences, before a Sessions Judge shall be by jury; and that such orders have been applied to many parts of India, including some of the most important districts of Bengal and the whole of Assam.

“The question as to the merits or demerits of the system of trial by jury, whether generally or as applied to British India, is a large question into which it is not necessary for me to enter now. Whatever is to be said for or against the system, it must be admitted that it already exists in British India—that it is an institution to which Englishmen are by long custom and not without good reason attached, and of which no Government would wish to deprive them without strong and sufficient cause. But I need hardly say that its maintenance, either in its existing form or with the extension which we propose to give it, is dependent on the assumption that it is capable of being so worked as not to cause any failure of justice or other grave evil, and that an instrument of justice which is intended and ought to be a terror, will not be converted into a source of impunity, to evil-doers.

“And this leads me to say one word in conclusion about a subject to which frequent reference has been made in connection with this measure. I mean the necessity of maintaining what is called prestige. This is not the time nor the place for discussing the ‘*arcana imperii*,’ and I do not propose to inquire in what sense it is true that British supremacy in India was obtained by, or rests on, the sword. I believe that in a far truer sense our empire is an empire of law. ‘The secret of our strength in India,’ it has been well said; ‘is that we have endeavoured truly and indifferently to do justice, according to the best of our skill and understanding, to all sorts and conditions of men.’ It is not on the enjoyment of legal privileges that British authority in India rests; it is not by the removal of such privileges that British authority will be affected. What will affect it will be anything which weakens the conviction that we are resolved and able to administer equal and impartial justice for the benefit of and against all classes of Her Majesty’s subjects.”

The Honourable Mr. HUNTER said:—

“My Lord, I understand that in voting for the Motion now before the Council, honourable members express at this stage their approval of the general principle affirmed by the Bill. The important amendments which have just been indicated in the speech of my honourable and learned friend are not yet before the Council in a substantive form. With regard to them, therefore, I shall make only two observations at present. On the one hand, I acknowledge that, as a whole, they will render the Bill a more acceptable measure. On the other hand, I deeply regret that one of those amendments, by extending to European British subjects, and to them alone, the jury system in trials before Magistrates, gives a fresh recognition to race distinctions in matters of judicial procedure. But the question immediately before those members who agree with me on the main issue, is not whether they dislike the proposed amendments, or how far they think them capable of improvement by the Select Committee, but whether the proposals are of such a character as to justify

them in withholding their vote from the general principle affirmed by the Bill as it lies on the table to-day. In my judgment the proposed amendments do not justify that course; and I observe that influential organs of Native opinion recognise the mistake which that course would involve. My honourable friend, Mr. Amír Alí, will doubtless acquaint the Council with the views of the Muhammadan community in this matter. Among other less homogeneous sections of the Indian races, opinion has scarcely yet matured, but I believe that the view which will ultimately prevail is that arrived at by the 'Indian Spectator,' the leading Native newspaper in Bombay:—

" 'Those of our countrymen,' says this Native journalist in his last issue, 'who will calmly survey in all its bearings the present aspect of the controversy, will, we are sure, find fair cause for congratulation in the settlement of this needlessly prolonged discussion. . . . District Magistrates and Sessions Judges, Europeans and Natives alike, are now on a par as to criminal jurisdiction. This substantive grievance has at last been redressed.'

" The last sentence expresses my own view. In 1872, this Council, in the absence of any representative of either the Hindu or the Muhammadan community, affirmed by a very narrow majority, a distinction based upon race, between judicial officers belonging to the same service—officers filling the same appointments, and exercising in all other respects the same jurisdiction. I hope that to-day the Council will, without a division or by a large majority, affirm the opposite principle. I do not disguise, and I do not underrate, the importance of the concession by which alone that unanimity could have been attained. But I think that the public agitations and painful personal estrangements of the past year will not have been encountered in vain, if the Council affirms by its vote to-day that the European and Native servants of the Crown in India, holding the important offices of District Magistrate and Sessions Judge, shall henceforth exercise the jurisdiction pertaining to their office without distinctions between them based on race or creed. Such an affirmation will be in strict accordance with the Queen's Proclamation when Her Majesty assumed the government of India. The intention of that Proclamation has always seemed to me to be as clear as simple and noble words can make it. But doubts have lately been expressed as to its binding effect. The present Bill will set at rest those doubts, so far as concerns the impartial admission of Her Majesty's Indian subjects, irrespective of colour or creed, to discharge the duties of offices to which they have been duly appointed, and which they are admitted, apart from race distinctions, to be admirably fitted to fill."

The Honourable Mr. Amír Alí said:—

" My Lord, I wish to make a few remarks on the motion before the Council, as I feel it will not be right on my part to give a silent vote upon it without explaining to some extent my own views and the views of my community with regard to this measure. We have been for some months past living in an atmosphere of misconception. People who at any other time would have been most unwilling to impute improper motives to their worst enemies have not hesitated to accuse of dishonesty every individual who happened to disagree with them in respect of the merits of the measure in question; and, though the controversy has now assumed a new phase, the uncharitableness which has hitherto characterized the discussions has, I fear, not quite ceased yet. I may, therefore, be allowed to state that the views which I entertain on this subject, and which I take this opportunity of expressing in Council, are not the result of anything that has transpired within the last twelve months, formed in the heat of controversy, and likely therefore to be biassed. My Lord, those views were first placed before Government in 1879. I was holding then the office of Chief Magistrate of Calcutta, and in that capacity my opinion was asked by Lord Lytton's Government upon the Bill which now forms the Code of Criminal Procedure. I ventured to point out then, what I have repeatedly urged since, that the invidious distinction created by the disability clauses of the Code, so far as they affected the higher judicial offices, was a mistake, both from an administrative as well as a political point of view; and though, at that time, as far as I know, there was no non-European District Magistrate, or Sessions Judge, yet it seemed to me that the time was not far distant when there would be several such officers, and that it

would give rise to considerable inconvenience if the disability clauses were allowed to remain unmodified on the statute book. My Lord, the difficulty which I apprehended in 1879 clearly made itself felt in 1883—sufficiently clearly to induce the Government, acting in conformity with the principles laid down by a succession of Viceroys and Secretaries of State, to bring in a Bill to remove, within a very limited extent, the disabilities under which non-European officers laboured, and to place them, for certain purposes, on a footing of equality with their European fellow officers. This measure gave rise to a most vehement opposition on the part of the Anglo-Indian community. Nobody, as far as I know, in our community quarrels with them for their opposition, but we cannot help regretting that men who ought to have known better, and who certainly owed some gratitude to the people of India, should so far forget themselves as to indulge in language alike discreditable to themselves and their community, and which had the effect of converting this legal controversy into a race difficulty. So far as we were concerned, we hailed with satisfaction the introduction of this measure as the first *bonâ fide* endeavour on the part of the British Government to give practical effect to the policy and principle enunciated in 1833, and emphatically reaffirmed by Her Majesty in Her Proclamation. It will, I hope, not be considered inappropriate by the Council if I say here that I read with considerable surprise the other day that, in Sir Fitzjames Stephen's opinion, the Queen's Proclamation 'was a mere expression of sentiment and opinion,' and nothing more. It is somewhat strange that a writer of his eminent ability should stoop, however unconsciously, to such a misrepresentation regarding the character of this great public document, when Her Majesty's own words are on record to falsify the assertion. Mr. Theodore Martin gives the history of the Proclamation in the following words :—

“ ‘The Act for the better Government of India had become law on the 2nd of this month (August 1858), and the Proclamation had to be settled, which was forthwith to be issued by the Queen in Council, setting forth the principles on which the government of that country was for the future to be conducted. The draft of this document was transmitted from England to Lord Malmesbury, the Minister in attendance on Her Majesty, and laid by him before her upon the 14th. It did not seem to the Queen to be conceived in a spirit, or clothed in language, appropriate to a State paper of such great importance.’

“ And then follows Her Majesty's letter to Lord Derby, conveying her instructions for the preparation of the Proclamation :—

“ ‘The Queen has asked Lord Malmesbury to explain in detail to Lord Derby her objections to the draft of the Proclamation for India. The Queen would be glad if Lord Derby would write it himself in his excellent language, bearing in mind that it is a female Sovereign who speaks to more than a hundred millions of Eastern people on assuming the direct government over them, and after a bloody civil war, *giving them pledges which her future reign is to redeem, and explaining the principles of her Government.* Such a document should breathe feelings of generosity, benevolence, and religious toleration, and point out *the privileges which the Indians will receive on being placed on an equality with the subjects of the British Crown,* and the prosperity following in the train of civilization.’

“ These words of Her Majesty leave no possible room to doubt as to the character of the pledges given by her to her Indian subjects. The further remark of Sir Fitzjames Stephen, that the proclamation has no legal force whatever, may be technically correct from the standpoint of a *special pleader* ; but it must be remembered that it was a solemn Act of State prepared by Her Majesty's Government, guaranteeing in the most formal manner the rights and privileges of the people of India upon the same basis as those of Her Majesty's British subjects, and it will require greater casuistry than ever Sir Fitzjames Stephen can bring to bear on the subject before the people of India will be convinced that Her Majesty's solemn words have no legal value or force when the rights of the different communities subject to her sway are weighed in the scales of justice. My Lord, it has been urged by some people that the measure in question would have had the effect of depriving European British subjects of a cherished privilege to be tried by their peers. I may be allowed to say

that no person—certainly no person who is not an Englishman—can be more anxious than I am to see Her Majesty's European British subjects secure in the enjoyment of any legislative privilege which they possess, and which does not conflict with the just interests of Her Majesty's other subjects. It seems to me, however, that the argument to which I have referred is based on a misconception. If people will insist on looking at a thing upside down, it must necessarily appear wrong. Such seems to me to be the view entertained by those people who consider that the effect of this measure would be to deprive European British subjects of a privilege which they now possess. Your Lordship's Government did not propose to take away any privilege from the European British subject, or to lower their status in any shape or degree. What the Government proposed to do was to raise the status of a few specially qualified officers, whom the Local Governments thought were fitted to hold certain high offices, and who had proved their capacity to hold such offices by the probity of their conduct and their intellectual attainments,—in fact, to assimilate them for certain purposes under the Criminal Procedure to European subjects. Sir Fitzjames Stephen himself had in the year 1872 declared certain people, who were neither born in the British Isles nor were the descendants of persons born in the British Isles, to be European British subjects within the meaning of the Act. The present measure was not intended to have any such far reaching or extravagant effect. It simply meant to declare that whenever a Native of India attained a high position in the judicial service he should be raised to the status of a European British subject for the purpose of discharging certain duties which European British subjects alone could under Sir Fitzjames Stephen's Code discharge. My Lord, it is on these grounds and for these reasons that the Muhammadan community—I may say the Native community at large—have supported the measure. The interest which we have taken was no doubt of a theoretical character, and therefore we would be glad if any satisfactory and practical solution can be provided for the difficulty which has unfortunately arisen between Government on one side and the Anglo-Indian community on the other. The proposed arrangement, however, owing to the vague and somewhat inaccurate manner in which it was put before the public, has naturally excited some alarm in the minds of the Natives of India, and the question has assumed a greater practical importance. I perfectly admit that by the arrangement in question the principle of the Bill has been thoroughly maintained with the acquiescence of the Anglo-Indians, which by removing the bitterness of the controversy constitutes no small gain to the cause of good government. At the same time, I cannot conceal from myself the fact that, unless it is carefully safeguarded, a machinery which is devised for securing the safety of European British subjects may be turned into an engine for the denial of justice to the Natives of India. It will be the duty of the Select Committee to devise sufficient safeguards against such an undesirable contingency, which would be prejudicial to the best interests of the Natives and foreigners alike. In view of the extension of the jury system to Europeans and the expectant attitude of the Native community, it is a matter well worthy of the consideration of Government whether the jury system or the right to claim a commitment to the Court of Sessions on the lines of the recent Summary Jurisdiction Act in England, if necessary in especially selected tracts, may not with advantage be extended to the Natives of India. The time when this matter should engage the attention of Government is one for their consideration, but I trust that an inquiry how far the boon can be granted may not be long deferred. I desire to take this opportunity to mention that I shall make certain proposals in Select Committee which are in *pari materia* with the proposed arrangement, and do not affect the European British subject, but are intended simply to ensure efficient administration of justice. I refer especially to certain modifications in Section 526 of the Code. I trust that the suggestions I intend to put forward will be accepted by the Committee, as I feel sure that they will to a large extent satisfy the Native community, and at the same time place the administration of justice upon such a basis as would command the confidence and approbation of all classes of Her Majesty's subjects."

The Honourable Mr. MILLER said :—

" I have listened attentively to the statement made by the honourable and learned mover, and I fail to find anything in what he has said to induce me to

change my opinion that the wisest and most statesmanlike course would have been to have dropped this Bill long ago. Still I would at this stage do nothing to bar a settlement of the question; and if it were possible now to refer the Bill to a Select Committee on a clear understanding of the principles on which the question is to be discussed, I should be willing to support that course, leaving details to be settled in Committee; but I would state, in the clearest manner possible, that if there is, as I fear is the case, reason to believe there is any double meaning possible in the terms of settlement which have been announced to the public, the difficulties which have been encountered will be tenfold increased, and I cannot support the motion that the Select Committee be directed to report in a week, unless the clearest agreement has been come to. It will not be possible otherwise to report promptly, and if it be attempted it will only lead to worse mischief."

The Honourable MR. GIBBON said:—

"My Lord, I am not prepared to support the motion that the Bill as it now stands shall be referred to a Select Committee; certainly not with instructions that the Committee report in a week. In an important matter such as this is, we would require to have the proposals of the Government fully laid before us. We require time to consider the provisions of the measure more carefully than we have as yet been able to do. Until now we have had before us only the Bill as originally proposed, with the concessions your Lordship, in our meeting of the 7th December, declared yourself ready to make to public opinion. Until now we have had no declaration from Government as to any further concessions it was ready to make. We had the newspaper reports of an agreement come to with the public; but I venture to say that, on comparison, it will be found that the statement now made by the honourable mover of the Bill is very different from the agreement published. I am ignorant of the rules of your Lordship's Council, but it seems to me that the Committee is called upon to draft a Bill, not to amend or report upon one. To draft a Bill we require to review the whole criminal procedure as far as it relates to Europeans; we not only require to examine the measure as it relates to the punishment to be meted out to criminals, but require to review the relations existing between a District Magistrate and his subordinates, his power of transferring a case from one file to another. Why should the European British subject be allowed trial by jury before a District Magistrate, and not before his subordinate? Are we to understand that the District Magistrate is not to try minor cases? I am not prepared to send the Bill in its present form to the Select Committee, nor to see it reported on in a week."

The Honourable RAÍ KRISTODÁS PÁL said:—

"My Lord, I approach this subject with a mingled feeling of satisfaction and sorrow,—satisfaction because the settlement referred to concludes a message of peace with a body of gentlemen who, however misguided and maddened on the present occasion, are undoubtedly important factors in the cause of the advancement and regeneration of this country, and sorrow because, unless carefully safeguarded, it may open a wide door to injustice. I love peace, but honour more, and justice above all. It is not my object to dwell on the history of the present scheme of legislation, on the bitter feelings and animosities which it has evoked, on the gradual minimization of the effect of the Bill, small by degree and beautifully less, or on the influence which the angry discussions of the past ten months may have on the political prospects of the people. I say let bye-gones be bye-gones. My present concern is to consider how far the proposed settlement will secure the interests and ends of justice. The primary object of your Lordship's Government in the proposed legislation has been to wipe out the brand of race disqualification in the judiciary within certain limits in the trial of European British subjects. And that object, I am happy to observe, has been steadily kept in view, and for it our grateful thanks are due to your Excellency's Government. I must at the same time confess that the scope of the original Bill, itself a small measure, has been materially reduced by the modifications proposed from time to time. As far as I understand these modifications, both the Native and European Sessions Judges and the Native and European District Magistrates will be so far placed on a footing of equality that they will exercise equal jurisdiction over European British subjects in matters criminal. This equalization, however, has been attained not by

extension, but by reduction, of power; by taking away the power of independent action of European Magistrates, and not by adding to the power of Native Magistrates. In so far, I am constrained to say, the solution of the difficulty has been achieved by an unsatisfactory process. The anomaly of race distinction is doubtless removed as between Magistrates, but it is effected not by adding to the power of Native Magistrates, but by changing the *venue*. Race distinction becomes most obtrusive only in the trial of a certain class of cases, and those cases are practically transferred from the file of the Native Magistrate to that of his juniors the Joint Magistrate. Thus, the race distinction is made more pointed and painful. If the Native Magistrate be invested with a power which he will not be called upon to exercise, that power to all intents and purposes will be an unreality. Doubtless, the European Magistrate will stand in the same position, but to him it will be obvious that it is an administrative or political exigency, and not a question of colour. It is proposed to safeguard the extension of the jurisdiction of the Native British Sessions Judge and the Native District Magistrate by giving the European subject the right to claim trial by jury in all cases. This is a right, I am quite aware, inherent in the Englishman, and an assembly of English legislators cannot but sympathize with it. I am also an advocate of jury trial for my countrymen, and am of opinion that the jury system ought to be extended throughout the country. But there are cases in which Englishmen in their own country cannot claim the benefit of a trial by jury, and even if the proposed modification should pass into law, the European British subject, when brought before a European Assistant or Joint Magistrate charged with offences of a certain class, will have no right to claim a trial by jury. The question is whether, when similarly charged before a District Magistrate, whether a European or a Native, he should consistently be permitted to demand a jury. This provision will introduce a new anomaly. In seeking to abolish one anomaly we will create another. Under the proposed settlement, the European District Magistrate will lose a power which he has exercised since the Act of 1872, without any complaint on the part of the European British subjects, while the Native Magistrate will be constantly put in mind that his power has been circumscribed because he is a Native. It may also lead to administrative inconvenience, which is worthy of serious consideration. Then, under the Act of 1872, one great reproach to the administration of criminal justice in this country, as far as the trial of the European British subject was concerned, that of dragging for trial the complainant and the accused with the whole host of their witnesses to the Presidency capitals at great inconvenience, expense, and hardship, was removed because it vested the District Sessions Judge with jurisdiction with or without a jury. Under the proposed settlement, in every case before a Court of Sessions the European British subject shall have the right to claim a trial by jury. In a district where a sufficient number of Europeans and Americans may not be found to constitute a jury, the result, I take it, will be to transfer the case to a district where a jury may be available. In this way the old scandals of trials at inconveniently distant places will, I fear, be revived. Many a poor complainant may think it better to put up with the wrongs they may have sustained rather than face the hardships and expenses of a journey miles and miles away from their homes for the sake of possible redress. In this respect the proposed settlement may lead to a denial of justice. In this respect it will manifestly be a retrograde move. It will, in fact, put back the clock of improvement introduced in 1872. There is another point urged by some of my countrymen, namely, the imminent risk of failure of justice in the case of a European British subject at the hands of a European jury under the peculiar constitution of Anglo-Indian society, and a small jury of those persons. I shall briefly touch upon this point. There have undoubtedly been cases on record in which there have been egregious failures of justice. I will not say that good men and true, when sworn in as jurors, will break their oath, and amidst large communities of men of the same race and religion engaged in different occupations and not bound by near kinship or absolute identity of profession or interest it is certainly easy to empanel a jury of good men and true; but amidst a small and sparse European population in the outlying districts of India, and particularly in critical times of excited feelings, in a small jury of these persons the risk of failure of justice is one which no Legislature should overlook. It is observable that the British Legislature has found it sometimes

necessary to suspend jury trials in Ireland. Under these circumstances, my Lord, I cannot look upon the settlement without grave misgivings. My humble belief is that it will add to the difficulties of a fair, speedy, and honest administration of justice, and thus prove injurious to the people. I shall, however, propose no amendment or specific motion now. Bearing in mind the singleness of purpose which has led your Lordship to this project of legislation, the anxiety which your Lordship has evinced to remove race disqualifications in the discharge of judicial duties, and the earnestness with which your Lordship has sought to give effect to the noble behests of Parliament and our gracious Queen Empress, I feel I should pause and consider. I would, therefore, reserve my objections to the details of the settlement till I see the amendments take a definite shape at the hands of the Select Committee. In the spirit of the eloquent peroration of my honourable and learned friend the mover of the Bill, I would venture to remind the Honourable Council that the stability of the British Empire in India rests on the adamant rock of justice, and I earnestly hope that that truism will not be lost sight of by the Select Committee in framing their amendments. In conclusion, I wish to make one remark. I have no objection to the motion that the Select Committee should report upon the Bill within one week. But I venture to express a hope that after the Bill is recast by the Select Committee it will be forwarded to the Local Governments and local officers for an expression of their opinion as to how far its provisions will be conducive to administrative convenience and to an efficient administration of justice. Great apprehensions are widely entertained that the Bill, framed on the basis of the settlement, will be unworkable, and will defeat the ends of justice. For this reason I think it is highly desirable, my Lord, that the opinion of the local officers, who are in the best position to form a just estimate of the practical tendency of the Bill, should be taken on this vitally important point. As the Bill has been allowed to hang on for the last ten months, surely it will not prejudice any interest to delay its passing for two months more."

The Honourable Mr. EVANS said :—

"My honourable friend Mr. Miller has alluded to a misapprehension or misunderstanding regarding the settlement which I had thought had been finally concluded by this matter. That misunderstanding was in the first instance more extensive. It has now been narrowed down to a point which I have had but very time to consider, in fact only a few hours, and which, therefore, I should not be inclined to pass any hasty opinion upon. I will only say that it does not, so far as I have yet been considering it, appear to me personally to be of primary importance, but the whole value of the modification by way of settlement, which we are discussing to-day, appears to depend upon whether or not they are accepted by the European community. I have had no time—a few hours only have elapsed since the matter has arrived at this stage—and I have had no opportunity of consulting the European community or their leaders upon it, and my view is, as I have said, that the advisability of sending the question into Select Committee on the lines indicated by the honourable mover of the Bill appears to depend upon the acceptance of those terms by the European community, and I feel I shall do no good by making any observations upon it at present. I shall, therefore, feel very much obliged to your Lordship if your Lordship will adjourn this debate. I do not know whether I shall be in order in formally moving an adjournment, but, if your Lordship will adjourn the Council meeting, I hope some settlement will be arrived at which will prove satisfactory."

His Excellency the PRESIDENT said :—

"I feel some hesitation in complying with the proposal which has been made by my honourable and learned friend, because the effect of that proposal will be to shut myself, and those of my honourable colleagues who may desire to speak on this occasion, out of the debate until the day to which the Council may be adjourned. I am always, however, most anxious to treat every member of this Council with the utmost consideration and courtesy. My honourable and learned friend says that he has not had time to consider a question which has arisen while he has been absent from Calcutta. Under these circumstances, it seems to me that I should not be

justified, in courtesy to my honourable and learned friend, in asking him to address the Council at the present moment, but, in agreeing now to an adjournment of the Council, I do so without prejudice, without in any way committing myself with regard to the point to which Mr. Evans has alluded. I agree, therefore, to the adjournment of the debate till Monday next at half-past 11."

The Council adjourned to Monday, the 7th January 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Fort William,
The 11th January 1884

No. 15.

ABSTRACT of the PROCEEDINGS of the COUNCIL of the GOVERNOR GENERAL of INDIA assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vict., cap. 67.

The Council met at Government House on Monday, the 7th January 1884,

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., presiding.
His Honour the Lieutenant Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Honourable J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Honourable T. F. Wilson, C.B., C.I.E.
The Honourable C. P. Ilbert, C.I.E.
" " Sir S. C. Bayley, K.C.S.I., C.I.E.
" " T. C. Hope, C.S.I., C.I.E.
" " Sir A. Colvin, K.C.M.G.
" " H. J. Reynolds.
" " H. S. Thomas.
" " G. H. P. Evans.
" " Kristodás Pál, Raí Bahádur, C.I.E.
" " Maharájá Luchmessur Singh, Bahádur, of Darbhanga.
" " J. W. Quinton.
" " T. M. Gibbon, C.I.E.
" " R. Miller.
" " Amír Alí.
" " W. W. Hunter, LL.D., C.I.E.

Criminal Procedure Code, 1882, Amendment Bill.

The adjourned debate on the Bill was resumed this day.

The Honourable Mr. EVANS said :—

" My Lord, I have great pleasure in stating that the point upon which I found some misapprehension had arisen, and which, as I said, was not one of primary importance, has been cleared up, and no misapprehension exists at present; and I am very happy to say, as I understand the matter, there is no doubt that a settlement has been arrived at in this matter which will, I sincerely trust, be satisfactory, and which ought to have the effect of putting an end to the bitterness of this controversy. Had it been proposed to proceed with the Bill as it stands, as apart from the settlement to which I shall presently refer, I should have felt bound to oppose, to the utmost of my power, the proposal to refer it to a Select Committee. Many reasons for this position have been given by me in Council in March, and fuller and more detailed reasons are to be found in the local opinions, the Minutes of the High Court in Calcutta, Sir FitzJames Stephen's letters, and a recent most able and

exhaustive Minute by Mr. Justice Field. It is unnecessary for me to recapitulate them, though later on I shall also have some remarks to make on the speeches made in this debate. I need only say that they are weighty, and touch matters which the European community regard as of vital importance to themselves. The opposition aroused by what European British subjects considered an unnecessary attack on their rights—their most valuable and necessary rights—was of a most strong and serious character. I, in common with many, had hoped that, on receipt of the local opinions of the most experienced officers in India adverse to proceeding with the Bill, the Government would have withdrawn it, and I still think that that would have been the wisest course. But the Government of India resolved to cut down the Bill so as to give jurisdiction over European British subjects to such Natives only as should attain the position of Sessions Judge or District Magistrate. Of this the public was first informed by Lord Northbrook's speech in November, and it was formally announced by His Excellency in the first meeting of the Legislative Council after the return of the Government to Calcutta. By this resolution the practical evils of the Bill were much lessened. The proposal, to quote the honourable mover's speech in introducing the Bill, to 'completely remove from the law all distinctions based on the race of the Judge,' was abandoned. That scheme was based on the 'disqualification,' to use my honourable friend's word, in the future of the bulk of the European uncovenanted servants of the Crown from exercising powers which they had long been exercising to the benefit and satisfaction of the State, in order to do away with an invidious distinction between them and the bulk of the Native uncovenanted servants who had never exercised these powers, and as to whom it was almost universally recognized that it would not be to the interest of the State that they should be empowered to exercise these powers; and also by disqualifying the whole European non-official community from exercising powers which they similarly had long exercised to the admitted benefit and satisfaction of the State, in order to do away with the invidious distinction between them and the non-official Native community, as to whom it had never even been suggested that it was desirable they should exercise these powers. This scheme has received the assent of no single responsible person, so far as I can recollect, whose opinion was taken, and the honourable and learned mover has himself in this debate admitted it to be 'defective.' I can only marvel how such a scheme originated, or how it passed the Indian Council, and how it came to be laid before this assembly. Not only was this wild scheme abandoned, but also all attempts to empower any other Native officers, except District Magistrates and Sessions Judges, was also abandoned. The Government should, it would seem, then have abandoned the Bill, for the honourable and learned mover said, in introducing it, that 'no change in the law could be satisfactory or stable which did not remove at once and completely from the Code every judicial disqualification based merely on race distinctions,' and said Government would not be justified in reopening this difficult question and the settlement of 1872, unless it saw a way to a solution which contained within itself the elements of stability and durability. And he deprecated constant tinkering of the law on such a subject. But this limited Bill was still open to the grand objection, that the class affected had an intense repugnance to having their guilt or innocence decided by a Native Sessions Judge or District Magistrate, and had good and weighty grounds for the objection. The Government of Bombay had come to the conclusion that it was necessary on this account to give the European British subject a right to a jury before a Native Sessions Judge, and had said that Government must recognize the fact of the unwillingness of Europeans to be tried by Native Magistrates, and the evils that would arise from trying to force them to be so tried, and that the Europeans honestly believed in the reasonableness of the objection. It was obvious from the first that this curtailed Bill could never be accepted by the European community. The Government insisted on proceeding with it, and the class to be affected by it doggedly resisted. They were animated by the same spirit which has always caused the English race to resist to the utmost all attempts by the Government of the day to encroach on what they believed to be their rights and liberties. Things came to a deadlock, and the tension became extreme and threatened grave consequences to the country. It became apparent to me, and I think to every one who had adequate means of information, that the situation had

become extremely dangerous, and was becoming more perilous every day. Under this crisis I thought it to be my duty to endeavour to bring about some solution of the question. Therefore I took it upon myself, after making such inquiries as I could, to make certain proposals to the Government, proposals which were not accepted. But, though they were rejected, counter suggestions emanated from Government, which resulted in the present arrangement. I distinctly wish to state that no proposal or suggestion of any kind emanated in any way from the Defence Association, of which I am not a member. But, when these proposals were laid before the Defence Association, it appeared that the bulk of the European community which they represented were, notwithstanding the irritation created by this measure, the same sensible, moderate, loyal Englishmen as they had been in 1872. In 1872 the European British subjects, in view of the grave administrative inconvenience then existing, agreed for the public good to give up to a certain extent their right to trial by jury, provided that the persons to try them without jury were European British subjects like themselves. When the Government now determined to reopen that settlement, and to give jurisdiction to certain Natives in the two classes of District Magistrate and Sessions Judge over European British subjects, the natural result was that they were entitled to fall back on their valued privilege of trial by jury. It was felt that the proposed arrangement in effect gave them back this privilege. The main point that they had fought and struggled for was the right to be tried by their own fellow-countrymen, that their own fellow-countrymen should decide whether they were guilty or not guilty. This right or privilege was secured to them by this arrangement, for they became entitled to trial by jury when claimed before the District Magistrate as well as before the Sessions Judge, and they rightly felt that they had substantially gained what they were fighting for; that it would not be right to incur the grave evil to the country which might result from the prolongation of the contest for any object that was not of paramount importance to them. The Government went further, and gave them what they had not struggled for. They gave them back the privilege of trial by jury, not only in case of their being tried by the Natives introduced into these two classes, Sessions Judges and District Magistrates, but in case of their being tried by any member of these two classes, whether Native or European. The jurisdiction of the District Magistrate was enlarged from three to six months' imprisonment, apparently to avoid any anomaly, but this did not hurt the European British subject, as he could now claim a jury before the District Magistrate.

"No one can rejoice more sincerely than I do that a settlement has been come to, and no one can wish more heartily that it should be speedily carried through, and that the present lamentable tension should at once cease. The settlement has cost me much time and labour, besides the anxiety and harassment which awaits any one who interferes as a volunteer to compose so bitter a dispute. All that remains to be done is for the Select Committee to see to the framing of the necessary sections to carry out the arrangement, and to see to the subordinate amendments and alterations which may be necessary to harmonize the new clauses with the Code; and I do not think that any difficulty ought to arise in carrying out the work, and see no difficulty in reporting on Friday week. No one can deplore more than myself the bitterness of the controversy, but I hope and trust it will cease from this day. I have all along felt assured that the object which His Excellency had in view was the good of the country. I have never doubted this, though I have thought he was grievously mistaken. I have always thought that, if His Excellency had known how real and sincere and important a fact the repugnance of the European community was, he would not have introduced this Bill. I am confirmed in this view by the manner in which he has dealt with the matter since this fact has become manifest to all. I am satisfied by inference from facts which have come under my observation that, by some misfortune which I am not able to explain, the warning which ought to have been transmitted to this country from the Indian Council or from the Secretary of State for India did not arrive before the introduction of the Bill. If so, this was a grave misfortune, but it is one which no one in this country is responsible for. Here I wish I could stop, but I cannot pass without a word about the previous speeches in the debate, lest my silence be misconstrued. The honourable mover in his speech stated that the principle of the Bill could not be better described than

in saying it aimed at the '*removal of all disqualifications based on race, and the substitution of a qualification based on personal fitness.*' He also said that 'It was never described by any Member of Government as the abolition of 'race distinctions for judicial purposes.' But turning to his own speech in introducing the Bill, I find the words, 'These proposals will completely 'remove from the law all distinction based on the race of the Judge.' Now, as to the matter of disqualification. The Natives are not disqualified from any office which we are now concerned with.' They can be made District Magistrates and Sessions Judges. The so-called office of Justice of the Peace has long ceased to be an independent office. It has become in the Mufassal a mere formula for conferring magisterial jurisdiction over British subjects. That this is so is clear from the fact that the term could be cut out of the Code and the jurisdiction given to the Magistrates by other words without any mention of the office, without any one being, as my honourable and learned friend put it, a penny the worse. The honourable and learned mover is, I think, aware of this, because he expressly says later on in his speech that Native Magistrates are not disqualified by the Act of 1872 from holding an office. It is not any such disqualification, that is, a disqualification for an office, which he seeks to remove, but a 'disqualification to perform a part of the 'duties ordinarily attached to the office.' How do the facts stand? The Magistrates in the Mufassal are of three grades. The general limitations on the powers of the different grades are in respect of the class of offence or the amount of punishment. Certain Magistrates of the First Class are called District Magistrates. Now, European British subjects are entirely exempt from the jurisdiction of the Magistrates of the Second and Third Classes, and besides this, when brought before a Magistrate of the First Class, they are entitled, as the privilege of the accused, to claim that the First Class Magistrate who is to try them should be not only a Magistrate of the First Class but also a Justice of the Peace and an European British subject. This right is guaranteed to them by legislative enactment. This is the special privilege of the accused which he is entitled to in a Magistrate's Court. In the Sessions Court he has the privilege of claiming that he should be tried by an European British subject, and in the Assistant Sessions Judge's Court by an Assistant Judge who is an European British subject and is of three years' standing. Now, is it not surely playing with words when my learned friend describes a Bill for taking away this special privilege of the accused to claim that the Native Magistrate shall be an European British subject, when he describes such a Bill as 'merely declaring that the simple fact of belonging to an artificially defined circumscribed category of human beings—that this fact standing alone, apart from other considerations, shall not constitute an absolute disqualification for the performance of certain important magisterial functions? The Magistrate, whether Native or European, is a Magistrate with the full powers of his grade and the full pay, but there is a special class who can claim the privilege of appearing before a certain class of Magistrates. The expression 'artificially defined circumscribed category of human beings' is a roundabout expression which would fit most legally defined classes whose members have, as members of such class, a right to any privileges, because legal definitions have generally to be more or less artificial, and a defined category of human beings is, I take it, in plain English, a special class. I fear it will turn out that even His Excellency belongs to an artificially defined circumscribed category of human beings, not only as British subject, but as a peer of the realm. In this latter capacity he has also a right to a special tribunal of his own peers in certain cases. The analogy would be more complete if some portion of the Judges in England were ordinarily peers, and if an Act had been passed altering the present law, and enacting that no English Judge who was not a peer could try a peer without his consent. Would it be fair to describe such a law as imposing on the other English Judges a disqualification for the performance of certain judicial functions—to ignore the the privilege of the peer and treat it as a matter of 'removing a disqualification' from the other Judges arising solely from their not belonging to an artificially defined circumscribed class of human beings, that is, of peers? The burden of proof, I take it, is on him who wishes to take away from any class a legal right they possess, and it cannot be got rid of by involving the matter in a cloud of words. The so-called principle of the Bill seems

founded on a misconception. But the matter does not stand there. The honourable mover says his object is to declare that this fact alone, apart from other considerations, should not disqualify from exercising certain powers. There are other considerations of the utmost weight and gravity to be found in the local opinions, which the honourable mover does not seem affected by. I will only mention one, the opinion of Mr. Badshah, a Native Covenanted Civilian and Assistant Magistrate of Goalundo, who wrote:—

“ ‘To equalize rights, to remove the irritation and friction which attend their inequality, is certainly high and noble policy. But if the privileges of a class are infinitesimal, if they injure no person, and irritate a very small body of men, if their removal is associated with the degradation of justice, and tends to bring Judges into contempt, it is still higher policy to let alone the privileges, so that the sacred name of justice may not be sullied, nor Judges become the targets for universal ridicule and abuse. It has been the aim and object of every civilized nation to secure their Judges from attacks on their impartiality. I cannot suppose that the present Government of India, if they were informed of all the facts, would depart from the declared policy of the civilized world.’

“ Now, as to the Charter Act and the Queen's Proclamation. I desire to treat both of them with all respect, and I have always regarded the Queen's Proclamation as a solemn declaration of policy. The Charter Act removed any disability that there might be on Natives from holding any place, office, or employment, and the Proclamation announces it to be the will of Her Majesty that ‘so far as may be’ all her subjects may be freely and impartially admitted to all offices in her service. As I pointed out, the so-called office of Justice of the Peace is not now really a substantive office. The substantive office is that of Magistrate. Then, there is no contravention either of the Act or Proclamation in the special privilege claimed. If the Justiceship of the Peace were really an office, it has never been open to Natives in the Mofussal; and, if this were a violation of the Act and Proclamation, it would be strange to find that the Government of India had been during all these years violating the Act and Proclamation, and that this fact had now been discovered by my honourable and learned friend for the first time since the introduction of the Bill. The honourable and learned mover expressly admitted this, and could say nothing more than that the Act of 1872 went perilously near to an infringement of the rule.

“ How, then, about the fallacy which, he says, underlies the reasonings of the Lieutenant Governor and the High Court? He says that the general rule is that the Native is not to be disqualified for the office, and is to be freely and impartially admitted. If he is not disqualified, and is admitted to the office, as it seems conceded, the rule is not infringed, and we are not called to justify an infringement by proof of an exception; and the fallacy is imaginary. With regard to a large portion of the honourable mover's speech which dealt with the old struggle as to subjecting the British subject to the country or local Courts, he has answered it himself by showing that struggle then was not whether, if the European was subjected to the local Courts, he should be tried by a Native or European, but whether he should be at all subjected in any shape to the local Courts. This was never accomplished till 1872, and the European British subjects then stipulated that, as they consented not only to be subject to local Courts, but to give up their rights to a jury in Magistrates' cases, they should be allowed a special privilege as to the constitution of the tribunal. Most of the old discussions have, therefore, no bearing, as they were addressed to a totally different point. Throughout his speech I find no indication of his recognition that the European British subject had any right to object to privileges being taken away, or had any voice in the matter. He treats his legislation as necessitated by the Charter Act and the Proclamation, and he seems to treat the concessions of right of trial by jury as a safety-valve attached to the Act in cases of accidents, which he will remove as an exception if it does not work satisfactorily, and meanwhile will sit upon to show how necessary it is. This is not my view. I hope it will work satisfactorily so far as it is required to work, but I regard it as an integral part of the settlement, and consider that, if it was objected to, the whole Bill would have to go, and the European British subjects would be entitled to revert to the *status quo ante* and to resist as vigorously as ever

any invasion of their rights. They will not, I am certain, surrender the right to a jury, except on the same terms as in 1872, or on terms which would equally secure their just liberties.

"There is one observation of the Honourable Dr. Hunter which I must allude to. He says he understands that honourable members who approve of this Bill going into Select Committee approve of the principle of it. This may ordinarily be the case, but not in the present instance. A settlement of this sort is the resultant of opposing forces. I no more affirm my learned friend's principle than I expect him to affirm mine. I only assent to this Bill going into Select Committee to procure settlement of a question which it is plain to see will produce most serious results if the controversy is continued.

"My learned friend Amír Alí states the object of the Bill very differently from the honourable mover. He says the object of the Government was to 'raise the status of a few specially qualified officers; in fact, to assimilate them for certain purposes under the Criminal Procedure Code to European British subjects.'

"Another statement of the honourable mover I must mention. He has said that 'he need hardly say that the maintenance of trial by jury, either in its existing form, or with the proposed extension, is dependent on an assumption as to its working.' This language has given rise to great mistrust and alarm. It has been taken to point to a decision on the part of the honourable mover not only to ignore the settlement now arrived at, but also to deprive European British subjects, and also Natives, of the existing right to trial by jury. This mistrust and alarm he has aggravated by another statement that Magna Charta might be said to have as much to do with the Bill as Domesday Book with the Permanent Settlement.

"It has been laid down by high authority that the right to trial by jury was part of the unwritten law of the realm confirmed to the subject by Magna Charta under the description of 'legem terræ,' and it was described by Sir William Jones, in his celebrated charge in 1792, as one of the three anchors which preserve the constitution from shipwreck.

"I do not wish to discuss the question, but only to say that I both trust and believe that the Government has no intention of interfering with a right which is specially valuable to Englishmen living under a despotic form of Government.

"I understand that now the honourable and learned mover did not very clearly recognize the settlement, because at the time he made his speech it was difficult to do so. My honourable friend Kristodás Pál has paid the European community a compliment by recognizing them as important factors in the advancement of the country. I have always been on friendly terms with the Native community, and have always sought to do individuals of that community a good turn when I could. I don't think I have done them a bad turn, unless they consider my opposition in this case one. But my honourable friend is hard to please. He is not content that Native and European District Magistrates are placed on the same platform, and that a Native District Magistrate should enjoy all possible dignities of the office, and be entitled to preside as Judge at the trial of a European. He wishes that he should act as jury too. My honourable friend forgets that the ancient common law form of trial, the 'legem terræ' of Magna Charta, was a trial by a Judge holding office from the Crown, and a jury not nominated by the Crown, and that the jury, who were always the judges of fact, were liable to challenge by the accused, to a certain number of challenges without cause shown, besides challenges with cause. Now, a summary trial is a case in which the Magistrate is Judge and jury. As a Judge he is a nominee of executive, and it is difficult for the accused to object to the Judge, except on very special cause. But if the Magistrate wants to act as jurymen too, I may fairly challenge him, and I never yet heard of a man insisting on his right to try the accused as a jurymen in spite of the accused's reluctance. As to the latter part of his speech, I read it as meaning that he fears that this Bill, as modified, will be less satisfactory to the Native community than the present state of affairs, that is, than the compromise of 1872. If he is serious in this, and can persuade His Excellency on the final debate to withdraw the Bill *in toto*, I shall certainly not object, for it is not as an improvement on the present state of things, but as a settlement of strife, that I support the modified bill; and if he

can get the strife ended by an amicable withdrawal of the Bill, no European will object. But I doubt if he is serious in this idea, and I think, when it is known that the proportion of Magistrates' cases tried by District Magistrates in Bengal is 7 as against 93·3 tried by his subordinate, his fears of inconvenience will abate. I should be very glad if the District Magistrate tried none at all. As the head of the executive—the superintendent of the police—receiver of private reports, &c., he is a very undesirable person to exercise judicial functions, and his executive duties are always heavy. I reiterate my sense of relief at the settlement of the question, though it is clear to my mind that it was a grievous mistake to raise the question by introducing this Bill."

The Honourable Mr. THOMAS said :—

"My Lord, I came into this Council Chamber on Friday last prepared to vote for the Bill going to Committee, because I thought there had been a Concordat, under the shadow of which we might still hope for peace for this troubled land, and I thought we had only to agree together to leave it to the Committee to work out an amicable *modus vivendi*. I thought, too, in doing so, to abstain from any discussion that might tend to prolong the lamentable controversy that has so angrily agitated the country to a state critically bordering on convulsion. But I am distressed to hear how the speech of the honourable and learned mover reopens old sores, reasserts things that have been answered *ad nauseam*, insists on prominence for the principles that have caused all this grievous agitation, and makes light of those which have instantly brought back peace. There is also a ring of uncertainty and unfinality about the future which fills me with grave misgivings, and about which I would fain be reassured by your Lordship. The speech of the honourable and learned mover is, then, my apology for any discussion at all on an occasion on which I had fondly hoped that we had at last met together to close deep sores, and not *infandum renovare dolorem*."

"We all know, my Lord, that one has only to confidently assert a matter often enough to get the great majority of the world to unconsciously accept it as true, and, the assumption once accepted, then it is easy to build up a splendid edifice upon it, and the majority gaze only at the splendid edifice that catches the eye, and forget the buried false foundation. Thus the honourable and learned mover has asserted over and over again, and has built up his present speech on it, as he has built up the whole measure, and has harped and re-harped on it in varied strains till all the Native press have chimed in, and he and they doubtless believe it to be a great uncontrovertible truth, that the Criminal Procedure Code imposed on the Natives of India restrictions and disqualification based on race distinctions; and yet, to my simple thinking, it is not the true state of the case for all that, and I find that the Honourable Justice Field, in a minute which was in the honourable mover's hands before this his last reassertion of the old error, disposes of the matter in words which, with your Lordship's permission, I will read :—

" 'Now I venture to take exception to the form of expression here used, as involving a serious fallacy which has since permeated and coloured, not only the utterances of public officers, but also the arguments advanced by the press and the public. In the first place, the new Code of Criminal Procedure did not impose any restrictions. It left the law in this respect in precisely the same condition in which it has been since Englishmen first came to India. Then, when we speak of "*restrictions*" on the power of judicial officers and "*judicial disqualifications based on race distinctions*," we use an erroneous form of expression, which has the effect of putting the burden of proof upon the wrong side. It lies upon those who seek to impose *restrictions* or *disqualifications* upon any race or class to prove by the most cogent arguments the necessity for their imposition. Even when the question is whether *restrictions* or *disqualifications* shall be maintained, a very slight *prima facie* case for their removal may fairly cast on those who advocate their maintenance the burden of showing that the ends of justice or public policy require that they should be maintained. But, in the present case, the question is one not of *disqualification* but of *qualification*; it is not whether *restrictions* or *disqualifications* shall be removed, but whether the personal law of a particular race shall be abrogated,—whether a right which has always been enjoyed by a

particular class shall be taken away. And it lies upon those who assert the affirmative of this proposition to prove it. It appears to me so necessary that the absolute accuracy of this view should be understood by all parties to the controversy, that, at the risk of being tedious, I shall submit at some length the grounds and authorities upon which it is based.'

"And, after referring to those authorities, the Honourable Mr. Justice Field says again:—

" 'That Englishmen should be tried by their own countrymen was at the same time part of this personal law, and a natural incident of their settlement in and occupation of the country. It is not, therefore, an accurate use of language to speak of this right, which is a portion of their personal law and the natural outcome of the circumstances under which they acquired the country, as a *restriction* or *disqualification* upon members of the other races, whom they have permitted, equally with themselves, to enjoy their own personal law in all matters in which they valued it, and in which its enjoyment was not opposed to natural justice, or was not inconsistent with the position which the British had necessarily to take up in the country. . . . There can be no doubt that, by stating the question for discussion in what I think I have shown to be an erroneous form, and thereby casting the burden of proof upon the wrong side in the controversy, not only have feelings been unnecessarily embittered at the outset, but the right determination of the true question at issue has been rendered more difficult.'

"Again, the honourable and learned mover makes a very sweeping and telling proposition, which I wish to take the liberty to quote and make bold to confront with an ugly fact:—

- " 'And this test of fitness which it would impose is a test to which no reasonable person could object on the ground of insufficiency. For, to say that a Native of India who has been entrusted with the powers exercisable by a District Magistrate or Sessions Judge, who has risen to the position of being the chief executive officer or the chief judicial officer in an area the average population of which, in Bengal, is about a million and a half,—to say that such a person cannot be trusted to exercise with justice and discretion the very limited jurisdiction which is exercisable over European British subjects outside the Presidency towns, is to say that no Native of India, however long and complete may have been his training and experience, however high and responsible may be his position in the public service, is fit to exercise that jurisdiction.'

"And now for my fact, one is enough. I do not say *ab uno disce omnes*—far from it. But I do say that one fact is quite enough to show that such very sweeping assertions had better have been left unsaid, and that there is much, very much, to be said on the other side, which for my part I came here on Friday prepared to leave unsaid, in order that we might all unite to endeavour to bring back peace to this land. I could name date and place and individual, but they must be too well known to need that, and it is enough for my purpose that the bare fact should be given. A certain Native, who fully answers the test to which, we are told, 'no reasonable person could object on the ground of insufficiency,' had brought before him the case of a man who, wholly unprovoked, ripped open a child, tore out its entrails, devoured them before the eyes of his still living victim, was apprehended actually red-handed, attempted no denial, and pleaded only the deliberate fulfilment of a vow to a goddess. For this wilful murder this gentleman, who satisfies every reasonable test, passed a sentence of three months' imprisonment, and the High Court had to annul the sentence and to send an English Judge to try the case *de novo*, and he, of course, condemned the murderer to the extreme penalty of the law. And yet we are told 'no reasonable person' could object to this gentleman's fitness to try him. My Lord, I repeat that I came here on Friday fully resolved to recur to none of these things, but the sweeping assertions of the honourable mover have compelled me to do so, in defence of the position that the Englishman is not unreasonable in wishing to retain in this foreign land his personal right to be tried by his peers.

"The honourable and learned mover will pardon me if I refer once again to his speech, and he will believe me that, in a matter that concerns crucially the well-being of the Empire, I am too deeply moved to think of anything

but the Empire. He will pardon me that it chanced to be his individual words that, in all personal good feeling, I still cannot help endeavouring to confute as dangerous. He says our Empire is an Empire of law. He makes light of prestige, and his policy is to level it. What does history, the logic of facts, say to this? Was there ever a nation that maintained its supremacy by the righteousness of its laws? When the Gaul was at her gates, did it avail the mistress of the world to plead the goodness of her laws before her late subject races? Her code of jurisprudence was much more in advance of the world and her times than ours is of India, and yet Brennus took no note of it. I will admit that England is the nation in all the world that proudly and justly claims to have most largely supplemented the paucity of her legions by the righteousness of her rule; but I hold that this theory is in great peril of being very much overstrained—that it is dangerous to make light of prestige. Prestige is to power as a reflector is to a light. It economises its force; and, if prestige be thrown away by levelling down, the battalions will have to be doubled to make up for it, for, after all, they are ‘the last logic of nations,’ and it is on them only that the law takes its stand. Sir Fitzjames Stephen has some incisive words on this point, and the explanation of the intense feeling that has been exhibited by Europeans lies, I think, not a little in the recognition of the danger of such levelling down policy. It were better, far better, never to have stirred these embers at all, and to have let European and Asiatic walk peacefully side by side in the places they had grown quietly to recognize.

“I cannot but think, too, that a very serious mistake underlies the words in which the honourable mover introduces the proposal for trial by jury, and if I am wrong I should like to be corrected. He says,—‘It has been strongly pressed upon us,’ and, ‘we have agreed to accept the suggestion which has been made to us,’ whereas the newspapers stated confidently that the suggestion came from Government and had been accepted by the representatives of the people, and they gave the text of the Concordat, and the Honourable Mr. Evans now confirms this impression; and it was because I thought it came from Government that I came here last Friday prepared to support it, as a possible opening for a peaceful solution of the present position. If it comes not from Government, and the Government is not prepared to let the Bill stand or fall on this issue, then it alters the whole aspect of affairs. If the Government will put this principle forward as its own,—this principle of the Englishman retaining his personal right to trial by his peers, whether by jury or as now,—the principle with which I am mainly concerned,—the principle to which the Englishman tenaciously clings and will never yield if he can possibly help it; if the Government will distinctly pledge itself to pass the Bill with this principle maintained or to abandon the Bill, then I for one will give my vote for the Bill going to Committee. But if it will not do so, if I am to understand, as I do from the honourable mover’s words, that the principle is one outside the Government proposal, and accepted only at the suggestion of others, and that, too, on the condition of its being found practically workable; and that, in the event, either in Committee now or in the working experience of after years, of its being found to be accompanied by administrative difficulties, then it will be dropped out and the rest of the Bill passed without it; then, my Lord, the position would be a very different one, and I could not but oppose the Bill.

“There are other things, too, in the honourable mover’s speech that fill me with grave misgivings. The same mouth that originally introduced this Bill with such a promise of permanency speaks now only of ‘meeting the immediate necessities of the case,’ and says we are not bound by the pledges given in 1872—the pledges of the principle of trial by his peers on which the Englishman withdrew his objections. Am I to understand that if, on the Government pledge of reverting to trial by jury, the Englishman withdraws his objections now, and as a compromise accepts all the other parts of the Bill, that pledge is not to be permanent? I hope your Lordship will be able to assure us to the contrary. I hope your Lordship will be able to assure us, both that the principle of the Englishman retaining his personal right to trial by his peers will be an integral part of the Bill, without which it shall not become law, and that it shall be so passed only with the view of its being a permanent settlement. If the Government can give no such assurances, then I submit that it

would be well to abandon the Bill, and let us revert to the position in which we all got along very happily until disturbed by these proposals to legislate for a mere theory unaccompanied by any practical want. If the Government can give no such assurances, it will certainly leave the European community in at least a permanent state of feverish unrest, if not in active agitation; for I ought not to conceal from your Lordship that outside these walls there is, as far as can be ascertained in the limited time allowed, much deep-felt anxiety on these points. And as to the Natives, it is already apparent that they do not view the Bill with satisfaction. It has only served to whet their appetites for fresh demands; this much is evident from the speeches of the two honourable Native members of this Council who have already spoken, and from the Native Press. If, then, neither Europeans nor Natives are satisfied with the Bill, and it is not only not wanted administratively, but may even create administrative difficulty, what is it that we are to gain by the passing of it? Is it the credit of the Government that is to be saved by persistence in the creation of a political sore that will go on festering in the hearts of both sides to break out at intervals as cases occur? Surely, the credit of the Government will stand a great deal higher if it has the manliness to abandon the Bill. Seeing also the administrative uncertainties which surround the working of the jury system, in the difficulty of foreseeing through the next few decades the lines of the spread of the European community in India, it would surely be safer and more statesmanlike to abide by the present system, which works well, and has satisfied every one, at least till such time as a change is positively required not by theory, but by the practical pressure of actual circumstances; and such is certainly not the case now. In brief, my Lord, my individual opinion is that I have seen no reason in all the months that have passed to change the views which I submitted to your Lordship's judgment in March last; and everything that has happened from that day to this has, to my thinking, only testified to the correctness of those views; for the deep abiding anxiety of the European and the portentous spread of race antagonism has fully justified my warning; and I am still unhesitatingly of opinion that the best course for the country would be, as I then said, to withdraw the Bill, or, failing that, to adopt the compromise which I then proposed. Still, looking to the agitated state of the country, I am prepared, if the Government still wishes to persevere with their measure, and can give us the assurances which I ask, to abstain from opposing the action of Government, in the hope that a *modus vivendi* may yet be worked out by that means. But if the Government can give no such assurances, then I think it wiser to walk in the tried paths to which no practical objection has yet been made than to take all uncalled for a dangerous plunge into what bids fair to be a sea of troubles in search of what, to my humble thinking, is a mere Utopia. And, even if the Government can give the assurances of principle and permanency, which I ask, still my abstention from opposing the measure will not be because my own judgment approves it, but in deference, for peace sake, to the proposal of the Government accepted by the European portion of the community. I need hardly add, my Lord, that, even so consenting, I must demur to the Committee being directed to report in a week. I see that supporters of the Bill as well as opponents, deprecate the pressure of such haste, and I see the Honourable Mr. Evans asks for the postponement of a report till Friday week."

The Honourable Sir A. COLVIN, said:—

"I do not propose to detain the Council long, or to examine very closely the merits of a controversy which I am glad to think is now drawing to a close. But, before proceeding with what I have to say, I would pause to remark that I entirely disagree with the Honourable Mr. Thomas when he says that the speech made by the Honourable Mr. Ilbert on Friday last was in any way calculated to reopen that controversy. As I understood the remarks made by Mr. Ilbert and by Mr. Evans they were both careful, while professing their willingness to meet on common ground on which they agreed to maintain what they considered to be the fundamental principles of public policy which they respectively affirmed. In plainly stating that policy, as they understood it, while they wished to abstain from further controversy, they equally refrained from saying anything which might prejudice their case should unhappily the time arise at which it might become necessary to re-

state it. They were careful, in other words, to maintain intact communication with their several bases. The Honourable Mr. Thomas has further asked several questions and pressed for a variety of assurances to which I consider it is not my business to reply. Had similar observations fallen from the Honourable Mr. Evans I might have had something to say; but the Honourable Mr. Evans has maintained a guarded and discreet silence and I shall follow his example.

"The constitutional and legal aspects of the question before us I leave to others more competent to discuss them, and the whole matter indeed has been so thoroughly thrashed out that I am perfectly aware that I can throw no new light upon it. But what I propose is to explain the reasons why the settlement which has been come to commends itself to me, and why I accept it as a settlement, which I consider should bring about a satisfactory conclusion of the issue which has been raised. The cardinal point to which the Government has throughout these discussions attached importance is the necessity for removing from the statute book the absolute disability under which the Natives of India rest, of exercising, in any circumstances whatever, jurisdiction over European British subjects in criminal cases in the Mufassal. As that point has been practically conceded, I will only say that I entirely agree with those who, through good report and evil report, have steadfastly adhered to it. The extent to which that disability is to be removed is to me matter of secondary importance. What, in my opinion, is of vital importance is that Natives of India should not, merely because they *are* Natives of India, be absolutely, and under every circumstance, disabled from exercising that jurisdiction. That a man who has been a Sessions Judge, or who has for years been in administrative charge of a district, and has given ample proof of his integrity, his independence, and his ability, be he European or be he Native, is equally qualified to exercise that jurisdiction, and especially in view of the safeguards with which it is by the law, even as it stands, surrounded, is amongst my most absolute convictions. On this point, as on many others connected with this matter, there have been great misapprehensions. It has been represented, for example, that this jurisdiction was to be conferred on all Native Magistrates; and then it was argued that because all Native Magistrates were unfit to exercise this jurisdiction, therefore, every Native Magistrate must be unfit; and that is a fallacy which has attracted much approval. The truth seems to be that the time has gone past when the Government can profitably discuss the question. It was open to the Government of India in times past to say to the Natives, 'We will not admit you to the higher offices; we will accentuate 'race distinctions; we will keep you wholly in a subordinate position.' But, happily, the Government of India did not say that. On the contrary, its policy has ever been to give to the Natives of India every encouragement in their efforts to improve themselves, and to assist them in their onward progress. The Government has always given them its warmest support and sympathy, and in the most solemn way has pledged its word, and at its word they have taken it; taken it at its word in a manner which had taken some of us by surprise. So that I look, my Lord, upon this measure as on a bill which has fallen due, and which the Government is bound immediately to honour. Now, I believe, that the main secret of our security in India lies in the conviction among its people that we shall, in all circumstances, and at all costs, maintain inviolable the pledges which we have given them, and that not only in the letter but in the fullest sense of the spirit of those pledges. Hence, much as I regard and value the desires and wishes of my countrymen, I value more their national honour. I think that there are moments when, misled by prejudice, or carried away by passion, they lose sight in public affairs for a moment of those principles which in their private life, and in their ordinary transactions, form their habitual rule of conduct, and I believe that at such times it is the special duty of the Government, at whatever temporary risk of reproach or unpopularity, to stand between them and the consequences of their misapprehensions, and to hold high the inviolability of its pledges—the ark of its covenant with the people of India. The best answer which could be given to the attacks which assaulted the Government in former days, when civil jurisdiction was given to the Natives in India, was the honourable and patient answer which they gave by living down the attacks which were made upon them; and I look to them now again similarly to justify the confidence which

the Government for a second time proposes, in pursuit of its engagements, to place in them, and to furnish a similar answer to the charge that the jurisdiction now to be conferred upon them is one which they are incapable of exercising. I myself know a score of men, neither Sessions Judges nor District Magistrates, but men of intelligence, independence, and integrity, plain country gentlemen, who are as competent to exercise this jurisdiction as the honourable member in charge of the Bill himself.

"This point settled, then, this cardinal point secured, it is the desire of the Government that material safeguards should be given to European British subjects; and I may say at once on this point that it seems to me very natural and reasonable that, in face of the new departure, European British subjects should wish to assure themselves of these safeguards; that they should come to the Council and say:—'We understand that you wish to adopt a policy with which we do not sympathize; we are prepared to admit that you consider it necessary, and we for our part do not propose longer to obstruct it; but from our point of view we ask that you should secure to us our personal safety.' I think that, under the circumstances, that was an argument which might be fairly expected from the lips of our fellow-countrymen in India; and I am of opinion that, so far as safeguards can be given, without insuperable administrative inconvenience or prejudice to the ends of justice, it is the duty of the Government to give them. In serious cases I think it natural that European British subjects should wish to safeguard themselves when they rightly or wrongly consider that their personal safety is in question. My honourable friend (Mr. Kristodás Pál), cursorily remarked the other day on what he considered might be some of the inconveniences attaching to the Bill. As I assent to the measure in its proposed form, I am bound to show that justice, in my opinion, will not be prejudiced if it becomes law. My remarks, like those of my honourable colleague, will be summary, but I am unwilling to leave his comments wholly unanswered. The first point raised by Mr. Kristodás Pál was with regard to distance. He argued that because a man formerly had to go possibly 1,000 miles to the High Court, he would be similarly inconvenienced now by having perhaps to go 50 or 60 miles. Well, there is a river in Monmouth and a river in Macedon; and that is about the measure of the similarity. In former days a man had to go far away to the High Court; now he would have to go at furthest to the Sessions Judge's Court, and would suffer no great inconvenience from the distance. That argument, I believe, was a mere flower of rhetoric, one of those flowers which overlaid the whole of my honourable colleague's argument, rather than a serious objection, seriously urged; and I do not think that he would be inclined to press it. Next, he spoke of the consequences which might arise in times of great excitement. But contingencies of that sort were provided for by the provisions of the existing law, which in certain cases, such as these, give to the High Court power to transfer cases from one to another Court. Then my honourable colleague said that to give the Judge the power to sentence, and to a jury the power to convict, was to give to the one the shadow and to the other the substance. But the power of sentencing seems to me a very substantial shadow, a shadow so substantial that it may hang over a man for the term of his natural life, a shadow the substance of which I, for one, am not in the least inclined to test. The honourable member then spoke of anomalies. I consider this very dangerous ground to tread, and I decline to follow him on it further than to say that in the honourable path of progress and of endeavour on which the Natives of India have embarked, they will, in my opinion, find more assistance in divesting themselves gradually of anomalies peculiar to themselves than in pausing to contemplate those which are incidental to their relations with their fellow-subjects. Then my honourable friend alluded to the miscarriage of justice through the partiality of jurors. Well, that, of all points, seems to me to be one which those who ask for this safeguard must see to. If the jurors abuse their powers, so much the worse for the juries; but I understand that there is a body of gentlemen here in Calcutta whose business it will be in future to look uncommonly sharp after us all, and especially after the working of this Bill, and, if I might give them a friendly word of advice, it would be to look especially sharp after the juries.

"My Lord, I need not detain the Council longer; I think I have now said what I had to say; and I will only add, in conclusion, that the Government, in my opinion, have maintained, and have been most careful most effectually

to maintain, the cardinal position which from the first they announced their intention to maintain, and that the safeguards which have been agreed to are quite compatible with that resolution. And, finally, I would express my belief that, if the reasonable remonstrances which your Lordship spoke of on the 9th March last, and which have been now addressed to us by the Honourable Mr. Evans, had been addressed to the Government at an earlier stage with the moderation, prudence, and sagacity which our honourable colleague has evinced, much of the controversy might have been avoided, and the untenable position which the opponents of the Bill had taken up might, at a far earlier moment, have been abandoned."

His Excellency the COMMANDER-IN-CHIEF said he wished to re-affirm what he had stated in the first instance, namely, that he entirely agreed in the principle of the Bill, and he was glad to find it was to be proceeded with. His Excellency thought from the first, like his honourable friend Sir Auckland Colvin, that every safeguard which the Legislature could give ought to be given; and His Excellency the Viceroy was aware that from last August he (the Commander-in-Chief) was willing and ready to extend the jury system. In the course of his speech his honourable friend Mr. Evans alluded to two points on which His Excellency would like to say a few words. He had expressed his surprise that a dangerous measure like this should pass at all through the Councils of India and the Secretary of State. As regarded the Council of the Government of India, every member of it was present, and could answer for himself; but with regard to the Council of the Secretary of State for India, His Excellency had something to say. It had been frequently asserted that the members of that Council had disapproved of the measure, and had warned the Secretary of State of its dangers; and it had been further asserted that these warnings had been communicated to the Government of India.

The speeches of the late Secretary of State on this question had, no doubt, been widely read. In these speeches Lord Hartington had publicly declared that the members of his Council unanimously approved of the principle of the Bill, and also that they unanimously approved of the Despatches which authorized the Government of India to proceed with it, both in its original and its amended form.

It was true that His Lordship, in his latest speech on this subject had to some extent qualified his original statement. He had admitted that some of the members of his Council warned him that the question raised in the draft Bill was one which had created much political excitement in former times, and it was suggested to him that this warning should be unofficially communicated to the Government of India.

This statement explained perhaps the rumours that had reached us regarding the opinions and warnings of the Secretary of State's Council, but they did not justify the assertion that the Council opposed legislation, and warned the Secretary of State of its dangers.

However this might be, His Excellency could positively affirm that no caution or warning of any kind, public or private, official or unofficial, ever reached the Government of India from the Secretary of State. That was all he wished to say on the subject.

His Honour the LIEUTENANT-GOVERNOR said that on the present occasion the remarks which he had to make must necessarily be very few. He wished particularly to express his congratulations to the Government and the gratification which he himself felt at the settlement which had been effected in regard to this Bill, and which was likely to bring to an end a controversy which had disturbed and distracted the province of Bengal to a degree which he had never before experienced in this country. He did not pretend to say that if this Bill stood on its original basis, or if it went forth now to the Select Committee without the proviso and safeguards which the negotiations of these few days had brought about, he should be prepared for a reference of the Bill to a Select Committee. But, when the Government had come forward with a proposal which had very much modified the form in which the Bill was originally framed, and when they had, in addition to that, agreed to the insertion of a proviso, which gave satisfaction to the non-official Europeans in the country generally, he did not think any one would be justified—and certainly he should not in his position be justified—in withholding his support to the

vote that the Bill should be referred to a Select Committee. Now, there was little doubt in His Honour's mind that, if the Council was discussing for the first time a bill of these proportions in this novel shape,—and practically they were considering it for the first time,—he had very little doubt that they would not have proceeded with it further without referring it for the opinion of the higher judicial officers of the country, and also of the local district officers. But it came before them now under extraordinary circumstances, and therefore had to be dealt with in an extraordinary way. It was a positive novelty in that it introduced for the first time into this country the system of jury trials in the magisterial Courts—a novelty, he supposed, in any country, and which certainly was more than unusual in India, where the provision of a jury was always a difficult matter, and in many instances almost an impossibility. It revolutionized completely our criminal procedure, by making it the law that the Magistrate and the Collector of the district, if a European accused was brought before him, should have recourse to a jury to try him. Now, the Bill in its new shape was not before the Council, and they could only judge of it by the general statements which had been made in this Council and out of doors. But he thought they might say this—that, so far as he knew, it would make very little difference in the administration of justice in this province, and from the day of its publication would practically be a dead letter in Bengal. It was a great thing to his mind that the present law was not changed, and that the Joint Magistrate of the district and other European officers who had criminal jurisdiction over European British subjects could take up cases against Europeans. Now, His Honour had stated elsewhere—and all experience proved the correctness of that opinion—that the Magistrate and Collector of the district, the gentleman on whom they were now conferring these powers, hardly ever took up cases connected with criminal trials against any one. As the honourable member, Mr. Quinton, had said on a previous occasion, the Magistrate and Collector of the district was a kind of superior person; he was the eyes and ears and hands of the Government, and was responsible to the Government for everything which went on in his district; he had to submit reports on railway accidents, the state of the crops, the condition of education, the management of dispensaries, and, in fact, everything connected with the executive management of the district. The Government looked to him to give any information which was required. He was the officer entrusted with the important charge of the revenue administration of the district. And with all this the practice had grown up—a practice which had removed the Magistrate and Collector very much from the administration of judicial work—that the whole of the criminal administration of the district fell to the hands of the Joint Magistrate, and the figures which represented this state of things His Honour was in a position to quote, because they were brought to notice in a paper which had recently been published. It was there seen that, in 1882, of the whole of the criminal cases in Bengal which came under trial, 99·3 per cent. were tried by Joint Magistrates, and their subordinate officers, and ·7 per cent. represented the proportion in Bengal, with a population of 69 millions, of cases of a criminal character which came before the Magistrate and Collector of the district. It would be difficult indeed to say what decimal would represent the proportion of criminal cases against European British subjects which would come before Natives Magistrates under this Bill. There were 45 or 46 districts in Bengal, and the Government had at the present time possibly to provide districts for two Native gentlemen; and His Honour could say that it would be almost impossible to realize the chance of any case of a criminal nature in which a European British subject was concerned coming before one or either of those gentlemen. In the first place, the Government would take care that no Native would be appointed Magistrate and Collector of a district in which there was not a European Joint Magistrate capable of taking up such cases, and in such districts the Magistrate and Collector would never think of calling up such cases for trial before himself. If, through absence, sickness, departure on leave, or other circumstances of that kind, of the Joint Magistrate, it fell frequently to the Magistrate and Collector to take up criminal cases, and it became the fashion to have recourse to juries, there would be serious risk of the whole thing breaking down. But his belief was that the Magistrate and Collector of the district would never have to deal with the cases for which the Bill was intended to

provide, and consequently the proposed settlement would, under existing arrangements, leave things very much as they were at present. The fact was that, in conferring this power on the Magistrate and Collector, the Government was conferring it upon the wrong person. It was the man who was coming up in the lower classes of the service, the Joint Magistrate, in regard to whom the difficulty would arise, from his position of possibly having to deal with European cases, and they would not, under the Bill as it stood, be able to take judicial cognizance of such cases. It was there where the shoe would pinch; it was not with regard to the Magistrate and Collector that, in his belief, any difficulty would arise.

Another observation which His Honour wished to make was with reference to a remark which fell from the honourable member in charge of the Bill, who said that, in giving these powers to the Magistrates and Collectors of districts, they were giving them to specially selected officers; and if it was conceded that the District Magistrate and Collector was one who had shown, by long administrative ability and capacity, his fitness to take charge of a district, with its large responsible functions, then on what ground was it just or reasonable to withhold from him those powers, those smaller powers, which they were now asked to give him? But the fact was that, in Bengal at least, the Government had no manner of power of selection in the appointment of Magistrates and Collectors of districts. A man rose to that appointment, not by ability, but, as soon as a vacancy arose, by seniority. The fact was that a civilian rose to that position after many years of labour and exertion, and he looked to, and felt himself entitled to and claimed, promotion as of right. His Honour did not allude to the cases of men who were utterly bad or utterly incompetent, and who would have no such chance; but, taking the general run of men, it was totally out of the power of the Lieutenant Governor of Bengal to refuse to a civilian, when his turn of promotion came, promotion to a district magistracy. He had been thirty years in Bengal, and he knew only of one case in Bengal where such a procedure was ever adopted of refusing a civilian such promotion, and that case was one of an unfortunate officer who himself readily acceded to the justice of the refusal. He was intelligent and active, but came to trouble from a stroke of the sun, and, though he diligently performed his duties to the end of his service,—the sedentary duties which were required of a Joint Magistrate in the trial of cases,—he accepted the position that he was not fit to succeed to the charge of a district. Of course, there were Magistrates *and* Magistrates. There were three grades of Magistrates in Bengal, and the Lieutenant Governor had the power, which His Honour had himself exercised, of refusing to allow promotions from one grade to another to an inefficient officer. But, if he held back promotion to an officer when it came to his turn to succeed to a magistracy, not only the officer himself, but the whole service, would resent the act as an unjustifiable exercise of power.

His Honour had always regretted that the rejection or the adoption of this Bill had been regarded as a political test of a standing or a falling India. He had seen it stated in Native newspapers that the rejection of the Bill implied that the government of 250 millions of people could not be carried on except at the point of the bayonet. As regarded the 250 millions, he would observe that, if we were to subtract 249 millions from the 250, it would leave a large margin to represent those who had ever heard of this Bill, or who ever cared for it, or who, if they did, would not much rather that it should be withdrawn. As regarded the bayonet theory, he did not believe that a shot in anger had ever been fired in Bengal, except perhaps in some local disturbances, since the days of Clive, and the military force that was now maintained in this province for the subjugation of 69 millions constituted in numbers what would make up the population of a fifth-rate town or of a large village. Taking the argument in its figurative sense, His Honour would ask his honourable friend Rai Kristodás Pál whether Bengal did not enjoy a greater freedom of action and more liberty of speech and of writing (which, he was afraid, often degenerated into license) than the Natives of Bengal had ever before enjoyed, or could possibly hope to enjoy, under any other rulers. Then, with reference to Her Majesty's gracious Proclamation of 1858, His Honour would be the last person in the world to depreciate it or ignore it. He agreed with his friend Mr. Ilbert that the ostentatious use of the word *prestige* was unnecessary and obnoxious.

Still the fact of our domination could not be ignored, and, when our rule was loyally acknowledged, it could best be established by the indifferent and impartial administration of justice to all sorts and conditions of men. He was not aware that any one would deny this; and, as regarded the plea now prominently put forward in respect to the Proclamation,—an argument which, if he remembered rightly, was brought forward at the eleventh hour,—he would again appeal to his friend Rái Kristodás Pál, with whom he had been associated more or less for the last thirty years in public business, whether since 1858 the policy of that declaration had not been honestly and honourably carried out in the liberal advancement of the Natives of the country. Their position in every High Court in India, their position as Judges in the Mufassal, their wider employment in every post and department of the public service, proved this; but, where the Proclamation was pleaded as justifying the right of giving to Natives the powers of Justices of the Peace for the sake of trying Europeans, it seemed to His Honour that this was just one of those cases which the conditional clause of the Proclamation itself excluded as dealing with a question of great delicacy and demanding the most cautious and statesmanlike discretion. For his own part, he did not hesitate to say that, in the condition and circumstances in which Europeans were placed in this country, they had a right to claim the maintenance of a privilege which they had enjoyed since 1773, either in the form of a trial by jury or, by what was substituted for it in 1872, by a trial before their own countrymen. It was because, without any reference to, or consultation with, them, that this privilege was ordered to be suddenly surrendered, that all the acrimony and animosity of the last six months was due. If the European community had been asked and consulted as regarded this measure even in its original form, or if the Bill in the modified character which the Council had now to consider with the additional safeguards now accepted had ever been suggested to them, he did not believe that any reasonable European would have hesitated to agree to it.

His Excellency the PRESIDENT said :—

“ I am glad that the time has at length arrived when it will be possible for me to express more fully than I have hitherto done the views which I entertain in respect to the measure which we are now considering. I may, I fear, have to make a somewhat large demand upon your patience, but I trust that you will accord to me the indulgence which the importance of the subject demands. On the 7th of December last, at the first meeting of the Council after the Government returned to Calcutta, I explained the modifications which we had submitted to the Secretary of State and which had been approved by him. Upon that occasion I purposely abstained from anything in the nature of argument, and gave to the Council a bare statement of facts. I must now enlarge and supplement that statement, and explain what course the Government has taken, and the grounds on which they have taken it. In doing so, however, I do not propose to over again the ground which I traversed in my speech on the 9th of March last year. I then explained how the question, with which we are now dealing, was raised in 1882, and I need not touch again upon that point. We were bound, as we considered, to answer the questions put to us at that time, and we could only do so in accordance with the established policy of the Crown and Parliament, upon which I shall have something to say before I conclude. We might, perhaps, while admitting the claim put forward at that time, have tried to postpone the period for its practical acknowledgement; but I explained, in March last, my reasons for thinking that it was wiser to deal with the subject at once, and I have nothing now to add on that point to what I then said. The Bill was therefore introduced, and the first question to which I desire to address myself is the consideration of what was the principle of the measure. That principle is stated in the Statement of Objects and Reasons which was published at the same time as the Bill, and in that statement I find the principle of the Bill declared to be ‘ to remove ‘ from the Code at once and completely every judicial disqualification which ‘ is based merely on race distinctions.’ My honourable and learned friend, Mr. Evans, has contended, I know, that the fact that under the Act of 1872 a Native Magistrate is precluded from exercising jurisdiction over a European British subject does not constitute a disqualification to hold the office, but it does constitute a disqualification to discharge some of the duties of the office.

and to remove that disqualification was the object of the Bill introduced last February. I quite admit that we have not been able, for reasons which I shall give before long, to apply this principle to the full extent which we first intended, and which was covered by the words 'at once and completely.' But to the principle of removing these disqualifications, as far as present circumstances would admit, we have always steadily adhered. Such, then, being the declared principle of the Bill,—to remove judicial disqualifications based merely on race distinctions,—I now come to review as briefly as I may the circumstances which have taken place since last March. It will be in everybody's recollection that, from the commencement of the controversy which was created by the introduction of this Bill, the opposition has been to the principle of the Bill and the policy upon which it was founded. In many writings, and in not a few speeches, I have observed that some of the most fundamental principles of just and righteous government have been ridiculed and denounced; it would be unjust to hold the opponents of this Bill responsible for the language of some of their number, but, at the same time, the existence of such sentiments and their public avowal is a circumstance which the Government, in considering how to deal with this question, could not overlook. The one demand made upon the Government from February to December was that the Bill should be withdrawn, and the theory put forward was that an Englishman had an inalienable right to be tried on criminal charges by European British Magistrates and Judges. It is now said that that claim meant that he should be tried by a mixed jury, but that view of this matter was never put forward until now, and the claim made was distinctly made in the form and words which I have just read. No doubt, it was sometimes said that the claim to be tried only by a European was a claim to be tried by a man's peers, and anybody who has any acquaintance with the meaning of that expression is, of course, aware that it does not relate in the smallest degree to the race of the Judge before whom the person charged with an offence may be brought. Trial by peers refers to jury trials, and not to the race of the Judge presiding over the Court before which the accused person is brought up for trial. My honourable and learned friend, hoping doubtless to get a rise out of me, alluded jocosely to the fact that I was a peer, and could only be tried, if I chose to claim the right, by the House of Lords. Well, I can only say that, if I were to commit a felony,—and I can assure my honourable and learned friend that I have no present intention of doing so,—I should certainly not claim to be tried by that illustrious body. And then my honourable and learned friend says, supposing that by the law in England only Judges who were peers could try peers, would such a law be considered to imply any disrespect to other Judges or to cast a slur upon them? I venture to think that it is highly probable that, if Lord Coleridge was the only Judge that could try a peer, his colleagues on the Bench would be likely to think that an invidious distinction; but I will tell my honourable friend one thing of which I am perfectly sure, and that is that, if such a system were to be by some extraordinary process set up in England, the people of England would not endure it for a single week.

"That, therefore, was the fundamental principle of the Bill and the policy on which it was founded, and consequently, when the Government came to consider last August, after the various reports of the Local Governments had come in, the course which they should take with regard to the Bill, they held that they were bound to uphold the policy and to maintain the principle thus distinctly impugned. I said, in March last, that to arguments which were inconsistent with the declared policy of the Crown and of Parliament, it would be contrary to my duty to listen. To this declaration the Government, last August, determined to adhere. We decided, therefore, not to withdraw the Bill, and, having come to this decision, we had then to consider two questions: to what extent the principle of the Bill should be applied, and whether we could offer any additional securities to Europeans against any possible miscarriage of justice. In considering the extent to which the Bill was to be applied, we took note that a considerable misapprehension appeared to exist as to what was the real scope of the original Bill—a misapprehension which seemed to me not to be altogether absent from the mind of my honourable and learned friend Mr. Evans to-day. But, in order to show what the scope of the Bill was, I cannot do better than refer to the language which was used in the

debate of the 9th March last by my honourable friend Sir Steuart Bayley. On that occasion Sir Steuart Bayley used the following words :—

“ ‘The aspect in which I have all along regarded the Bill is that its main and important object, its substantive principle in fact, is to allow Native civilians who may rise to be Session Judges or District Magistrates to exercise the powers which the law vests in Sessions Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions, in regard to Assistant Commissioners and Magistrates of the first class, I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience.’

“ That is not a description of the Bill in its present condition, and after it has been amended and its scope reduced, but it is a description of the Bill given last March when it was before the Council in its original shape. When we came, therefore, to consider the question, we felt that what Sir Steuart Bayley called ‘the main and important object and substantive principle of the Bill’ stood upon a different footing from that which he described as a ‘fringe,’ and it certainly seemed to me and others in the light of the controversy which had sprung up, and of the great dislike and fear of the extent of this Bill which were widely entertained, that those who were opposed to it might fairly ask that anything in the nature of a discretionary power vested in the Executive Government should be removed by the Bill. When we became aware of the strength of the feeling this question had originated, it seemed but a reasonable concession to make to those who entertained that feeling that there should be nothing in the measure of a discretionary nature, but that the Act to be passed should distinctly and clearly lay down what was the extent of the jurisdiction to be given. Besides that, as my honourable and learned friend Mr. Ilbert said, none of the Local Governments who were opposed to the withdrawal of the Bill, with the exception of the Government of the Punjab, appeared to desire to have this discretionary power conferred upon them. Under these circumstances, we determined to withdraw this discretionary power, to give up what Sir Steuart Bayley called ‘the fringe.’ It is quite true, as I have already intimated, that in so doing we became unable to apply the principle of the Bill to the full extent which we originally contemplated, but we upheld that principle in itself and gave almost as much practical effect to it as would have been given to it in the Bill as originally introduced. We therefore did not hesitate to remove from the measure everything in the nature of an executive discretion. We then came to consider a very important point, and one which we have had always in view, and which has guided us very much in our recent action, namely, whether there were any additional securities, beyond those which the present law afforded, which could be given to European British subjects against those miscarriages of justice which they appeared to fear; and we were of opinion that there was a suggestion made by that distinguished person, Sir Charles Turner, the Chief Justice of Madras, which would go a very considerable way in that direction, while at the same time it would effect a positive amendment of the law as it stands. In order to make perfectly clear the nature of Sir Charles Turner’s proposal, I would ask you—though the extract is a little long—to allow me to read to you what he said in the memorandum which he wrote in reference to the Bill. In the seventeenth paragraph of that memorandum he said :—

“ ‘In order to allay whatever apprehension is seriously entertained to the fitness of the officers on whom jurisdiction would be conferred, I have considered whether it might not be desirable to give to every European British subject the same option in respect of the presiding Judge or Magistrate as he at present enjoys to a qualified extent in respect of jurors and assessors. I have come to the conclusion that it would be unbecoming to the dignity of the judicial office that this option should rest with those who are subject to the jurisdiction, and that a safeguard, reasonably sufficient, might be provided by rendering more effectual a provision of the existing Code. The 526th section, Code of Criminal Procedure, enacts that, whenever it is made to appear that a fair and impartial inquiry cannot be had in any Criminal Court, or that some question of law of unusual difficulty is likely to arise, the High Court may transfer a case to another Court, or to itself. I would authorize the High Court

to make the transfer, if it is made to appear "that it is expedient for the ends of justice." And I would supply a defect in the Code by directing that in any case in which prior to the commencement of the hearing the Government, the complainant, or the accused shall notify to the Court its or his intention to make an application under Section 526, the Court shall adjourn the hearing for such reasonable time as may be required to enable an application to be made, and an order obtained thereon.

"That was, in Sir Charles Turner's own words, the nature of his proposal, and those were the reasons which he gave in its favour. They appeared to us to be very good reasons, and the proposal commended itself to our judgment in a high degree, because it would enable a transfer to be made without casting upon the Magistrate, from whom the case was to be transferred, any such reflection as might seem to be involved in the statement necessary under one of the sub-sections of the present Code, that 'a fair and impartial inquiry cannot be had,' when a Court has to say that it might be thought to imply some distrust of the Magistrate trying the case; and, therefore, we considered that upon that ground, among others, it was desirable that the discretion of the High Court in this matter should be increased, that some such words as those suggested by Sir Charles Turner, namely, 'that it is expedient for the ends of justice,' should be introduced. Then, it seemed only proper that, when an application of this kind was made, the case before the Court below should be suspended for a reasonable time. Not to do that appeared to make the application almost a farce, and we very readily adopted this amendment as in itself desirable quite apart from anything relating to this particular Bill. The amendment would also be equally applicable to every one, and not confined to any particular class of Her Majesty's subjects. These were the modifications which recommended themselves to the Council last August, and with these modifications the Bill was, as honourable members are already aware, sent home to the Secretary of State, and was approved by him. This was the state of things when the Government reassembled in Calcutta on the 1st of December. Up to that time none of the opponents of the Bill had approached the Government with any proposal whatever for its further modification, or for the granting of any additional securities to those who would be affected by it. As I have said, the one simple and unvaried demand had been that the Bill should be withdrawn. But, when we arrived here in Calcutta, my honourable and learned friend, Mr. Evans, with that public spirit for which he is distinguished, intimated to the Government that he thought that he saw a further alteration of the measure which might be possible, and which might put an end to the controversy which had raged so long. My honourable and learned friend no doubt still maintained that the Bill had better be withdrawn, but he made a suggestion, which I do not think he will object to my stating to this Council. That proposal was that the sections of the Code which create the legal disqualification of Native Magistrates to try European British subjects should be removed, but that every European British subject brought before a Native Magistrate should be given the right to claim a transfer to a European Magistrate. I think that is a correct statement of the proposal of my honourable and learned friend. Any proposal coming from Mr. Evans naturally demanded the utmost consideration from Government. It was the first proposal of the kind which had reached our ears, and we consequently gave to it a most full and careful deliberation. It seemed, however, to us that it was a proposal which we could not accept, because it appeared to take away with one hand what it gave with the other. It gave the appearance of removing the legal disqualification, but it accompanied it with a right on the part of the accused person to set up that disqualification again by claiming to be tried by a Judge of his own race, and it also seemed to us to be objectionable because it admitted distinctly the principle that a European British subject had a right to refuse to be tried by a Native Magistrate or Judge; and, lastly, we thought with Sir Charles Turner, as stated by him in the passage which I have read, that such an option on the part of the accused would be unbecoming to the dignity of the judicial office; and under these circumstances we felt ourselves obliged—I can truly say with great regret—to refuse to accept the proposal which my honourable and learned friend Mr. Evans with the most friendly intention to both sides had offered to our consideration.

“ But the fact that an important member of this Council, and a decided and undoubted opponent of this Bill, had proposed an arrangement to the Government which he thought might lead to a settlement of the difficulties which had arisen, raised at once for our consideration the question whether there was anything in the way of additional security which we could give to those who would be affected by this Bill without any sacrifice of principle, with a view to allay the fears which we knew to be largely entertained, and thus to enable the Bill to be passed with such a degree of general acquiescence as would prevent its being made even after it became law the battle-field of contending parties. It was our duty to take into serious consideration the chances of such a settlement which the opening made by Mr. Evans' proposal gave us, and we entered upon the examination of that subject with a very earnest desire to satisfy all that was just and reasonable in the wishes of those who objected to the measure, and to find, if possible, a mode by which we might, consistently with the principles we determined to uphold, arrive at a pacific solution of the question. The only proposal which seemed in any way to fulfil the conditions which I have described of being not contrary to the principle of the Bill, and yet one which might be accepted by those who were opposed to us, as giving them legitimate security, was one which had been made in the month of May by the Government of Bombay, and under which a right to claim a jury would be given to Europeans in serious cases, summary jurisdiction over Europeans being left as it is at present. The proposal was made by the Government of Bombay in their report upon the present Bill, and had been considered by the Government of India in August last, and I do not wish to deny that it had for me at that time an undoubted attraction, perhaps natural enough, because, having lived all my life in England, I have an Englishman's feeling on the subject of a jury. It did not, however, at that time commend itself to the approval of the majority of my colleagues, and we had nothing before us whatever to lead us to suppose that if such a proposal had then been made by us it would have been accepted as a satisfactory settlement of the question by the opponents of the Bill, they having up to that time declined to accept any arrangement, except a complete withdrawal of the measure, and never having in any form or through any person approached us with anything in the nature of a proposal for a compromise or for a modification of the Bill. Under these circumstances, a suggestion of this kind was made by my honourable colleague Sir Auckland Colvin to my honourable and learned friend Mr. Evans, and the upshot of what passed between them is stated in the words which I shall here read to the Council. The Government undertook—

‘to agree in Select Committee on the basis of the modifications approved in the Secretary of State's despatch to the right being given to European British subjects, when brought for trial before a District Magistrate or Sessions Judge, to claim trial by jury such as is provided for by Section 451 of the Criminal Procedure Code, subject to the following conditions:—

‘(1.) No distinction to be made between European and Native District Magistrates and Sessions Judges.

‘(2.) Powers of District Magistrates under Section 446 of the Code to be extended to imprisonment for six months or fine of two thousand rupees.’

“ There was in this undertaking no sacrifice whatever of the principle of the Bill. It distinctly lays down as a condition of the acceptance by the Government of such a proposal in Select Committee, and the extended right to a jury trial that no distinction should be made between European and Native District Magistrates and Sessions Judges. Both under the arrangement will be placed in all respects on the same footing. All judicial disqualifications of Native Magistrates and Judges of those grades will be removed. Europeans will be liable to appear equally in their Courts, and will be dealt with by them precisely in the same manner. The principle of the Bill will thus be entirely maintained. This arrangement also gives no sanction to the theory to which I have already referred, that an Englishman possesses everywhere an inalienable right to be tried only before a Magistrate of his own race, a right which, as my honourable friend Mr. Ilbert explained in his speech, is not recognized in other dominions of the British Crown—in Ceylon or in China, for instance—and which no Government, since the passing of the Act of 1833, which distinctly contravenes any such claim, has ever been known to admit. But it was an

arrangement which, as it seems to me, ought to be satisfactory to Englishmen in India, for it gives them in all serious cases a judicial security to which they are accustomed at home, which is peculiarly English in its character, and upon which they have been brought up to set a very high value. Mr. Kristodás Pál, however, urged, on Friday last, certain objections against this arrangement. He spoke of it, in the first place, as involving a reduction of the power of Magistrates, and seemed to think that some slur was cast upon a Magistrate if he was required to try a case with the assistance of a jury. I cannot, with my English experience, for a moment admit that such is the case. It is notorious that, both in England and in India, it is the higher Magistrates who try cases with a jury. Criminal trials before the High Courts of India are by jury. The higher Magistrates in England try by jury, and in the case of Justices of the Peace at home, when they sit in the higher capacity of Justices in Quarter Sessions, they try by juries, it being in their lower capacity in Petty Sessions that they try cases without them. To be required to try with a jury does not imply any diminution of the status of the Judge or Magistrate; indeed, it rather implies the contrary, and, as a matter of fact, Mr. Kristodás Pál should remember that, under the arrangement proposed in this agreement, the powers of District Magistrates over European British subjects will be materially increased and not diminished. Again, Mr. Kristodás Pál spoke of the possibility of a failure of justice resulting from this system. Such a failure of justice would, undoubtedly, be an intolerable evil, but I need scarcely say that, if I anticipated that this arrangement would result in any such failure of justice, I should never have been a party to it. I do not think that such fears are well founded. Of course, if hereafter it should turn out that serious failures of justice or other grave evils arise out of the system about to be established, it will be the duty of the Government of the day to apply adequate remedies to those evils when they appear; but, as I have said, I do not anticipate that those evils will be created, and I have the utmost confidence that Local Governments and their officers will do all in their power when this Bill becomes law to secure the honest and effectual working of this extension of jury trials. This is the desire which I and my colleagues entertain, and I am sure that this course will be taken by all Local Governments throughout the country.

“Then Mr. Kristodás Pál said that numerous transfers to distant places will be necessary under this arrangement. My honourable and learned friend Mr. Evans, I think, made some remarks upon that point to-day. It does not seem to me probable that that will be the case. There is no intention of altering the present arrangement for the trial of petty cases by Magistrates below the rank of District Magistrates, or of adopting the suggestion of Mr. Gibbon, the other day, that a general right should be given to Europeans of trial by jury in all cases. Summary jurisdiction will remain as it is at present, and care will be taken not to render the jury system ridiculous by applying it to every petty case. In all cases tried before a District Magistrate the right to claim a jury will be given, but it must be borne in mind, in reference to this question of frequent transfer, that those will almost invariably hereafter be cases for which the proper punishment is from three to six months, and which, under the present law, would have to be sent to the Sessions Judge, and, therefore, though it should be found occasionally necessary to transfer those cases to some more distant officer, nothing more will occur than would occur now, when District Magistrates are debarred from dealing with such cases at all, and are obliged, under any circumstances, to transfer them to the Sessions Court. These are subjects, however, which I have no doubt will engage the attention of Local Governments, and it will be their duty to do everything in their power to prevent anything in the nature of inconvenience to suitors.

“But there are aspects of this case, looked at from the point of view of the Native community, upon which Mr. Kristodás Pál scarcely touched, and on which I desire to make a few observations; and, at the outset, I must say that, if the proposed amendment had given to one class of Her Majesty's subjects a privilege from which the rest of those subjects were wholly debarred, and to which the law afforded them no means of ever attaining, the objections to it would have been very serious, but, as honourable members are aware, that is

not the case. It must be remembered, in the first place, that the amendment, while it takes nothing away from the Natives, gives to the Europeans in jury districts little or nothing which they do not now possess. As summary cases will in practice be disposed of by Justices of the Peace below the rank of District Magistrates, and, as the cases which will be dealt with by District Magistrates will generally be those which will fall within the category of the more extended powers with which they are to be invested—cases which at the present time go to the Sessions Judge—the Europeans will, in the great majority of cases in jury districts, obtain no novel right to a jury trial at all. Practically, therefore, in these districts this arrangement will leave things very much as they are, so far as regards the question of right to trial by jury, though the arrangements under which that trial will be conducted may be of a somewhat different character from the present arrangements. In non-jury districts the amendment will, no doubt, at present introduce a distinction, but the distinction is one which, as we all know, can be removed without fresh legislation in any district and at any time if the Local Government should think it fit to do so by extending the general jury system. My honourable friend, Mr. Amír Alí, touched upon this subject, but I did not understand him to say that he proposed to move any amendment regarding it in the Select Committee on the Bill, and I should deprecate his doing so. As I have alluded to remarks which fell from Mr. Amír Alí, I may say, with respect to certain amendments which he announced his intention of submitting to the Select Committee, that I am sure the Select Committee will receive with careful attention anything which he may bring under their notice, but I cannot, of course, express any opinion on the part of Government in regard to proposals which are not at present before us. I was glad, however, to observe that he said that what he had to propose would not affect the European British subject, because of course it must be clearly understood, with respect to that branch of the question, that the Government are altogether bound by the agreement which has been made through the instrumentality of Mr. Evans, and by that agreement they intend to abide. But Mr. Amír Alí alluded specially to certain amendments which he intended to suggest in Section 526 of the present Code. That is the section affected by Sir Charles Turner's proposals, and I am quite sure that the Select Committee will be very glad indeed to have the assistance of my honourable and learned friend in amending that section with the object of extending the powers of the High Court in regard to transfer. I am afraid that, in touching upon the point specially alluded to by Mr. Amír Alí, I have somewhat wandered from the question with which I was dealing when I first referred to this matter, and I will now go back to it.

"Native opinion is, I know, averse to such distinctions as those which will be made in non-jury districts. The feeling is very natural, but I would ask those who entertain it to remember that the measure which we are now, I trust, about to pass will vindicate a principle of the greatest value to Her Majesty's Native subjects, will remove a disqualification very distasteful to some of the highest Native Magistrates and Judges of the land, and will constitute a substantial, if but a limited, advance in the application of the just and wise policy inaugurated in 1833 and confirmed in 1858. If, to obtain these results in a manner calculated to give them the solid security afforded by the acceptance of the general body of the European community, the Government has consented to grant to those who are directly affected by the change of the law now about to be made a safeguard specially suited to their feelings and consonant with their traditions, it has surely acted wisely in the interests of all parties concerned. One side has gained a re-affirmation and extension of a great principle, which has been violently assailed and bitterly opposed, and the other has received a concession calculated to allay all that is reasonable in fears which have no doubt been widely felt. It seems to me that we may find in these considerations the true justification of the course which the Government has taken.

"Before I pass to another topic of great importance, I would just say one word in respect to some observations which fell from my honourable friend the Lieutenant Governor. He spoke of the principles on which men were promoted to the highest posts in the Civil Service; and he said that those promotions were practically made by seniority. Well, I should be the last man to deny

the claims of seniority; they are great, and constitute a very important element in the consideration of questions of promotion, but at the same time they ought not to constitute the sole, or even the ruling, principle in respect to such promotions. In the Despatch from the Court of Directors, to which reference was made on Friday by my honourable friend Mr. Ilbert, it is laid down distinctly that fitness is henceforth to be the criterion of eligibility. I think that that is a sound principle, though I admit that great weight ought to be given to the claims of seniority, and I can assure my honourable friend the Lieutenant Governor and others that, so long as I hold office, they will always have my warm support in any case in which they think it necessary to disregard the claims of seniority in favour of considerations of fitness.

“And now, before I conclude the observations I have to make upon this occasion, I wish to explain to this Council the view which I entertain of the policy by which the Government has been guided in the introduction and conduct of this measure; and, in the first place, I desire to point out to honourable members that this policy is not, as it is often represented to be, something entirely novel, which has been invented by myself or sent out brand new from England. It is, on the contrary, a policy which was introduced half a century ago, when Europeans were first admitted without restriction to this country. It was a great conception of a great Government, of which, be it remembered, men such as Lord Grey, Lord Palmerston, Lord Russell, Lord Lansdowne, and the late Lord Derby were members. It was clearly enunciated in Parliament and confirmed by both Houses; it was explained and commented on in the Despatch from the Court of Directors to which my honourable friend Mr. Ilbert alluded on Friday; and, finally, it received a solemn confirmation in the Queen's Proclamation of 1858. In the Act of 1833 and in that Proclamation we have then, as it seems to me, two great instruments embodying a clear and definite policy, from which, as I hold, it is not open to any Government of India to depart. The Charter Act of 1833 was so called, because it prolonged for a limited period the charter of the East India Company, but it seems to me that it deserved the name much more because it conferred a Great Charter upon the people of India. The Proclamation of the Queen, issued at a moment so important and so critical as the assumption by the Crown of England of the direct government of the British dominions in India, explained the principles upon which that government was to be conducted, and gave pledges to Her Majesty's Indian subjects which it has ever since been the duty of Her Majesty's representatives to redeem. Those who know anything of the intention with which that Proclamation was prepared know very well that its authors regarded it as having in view the objects which I have described, and to look at it in any other light would be altogether inconsistent with the great and noble purposes with which it was issued. I know that the view which I hold upon the subject of the character of this document has recently been repudiated by a learned Judge in England, Sir Fitzjames Stephen, who has spoken of it in these words:—

“‘The Proclamation has no legal force whatever. The Act of Parliament has no force beyond the legal effect of its words. Neither can bind the Indian Legislative Council, which ought to be guided in the exercise of its discretion solely by its own opinion of the merits of the measure submitted to it, and the extent of its legal authority.’

“And then mark this language—

“‘As a ceremonial, the Proclamation may have been proper, but in any other point of view it is a mere expression of sentiment and opinion, worth as much as the sentiments and expressions expressed would have been without it, and no more.’

“We did not require one of Her Majesty's Judges to tell us in these days that a Royal Proclamation has not the force of law; but when Sir Fitzjames Stephen goes on to maintain that a Proclamation issued by the Sovereign of England and of India is only a ceremonial, and is worth no more than the sentiments which it expresses are worth by themselves,—that is, that it was a mere formal utterance of sentimental phrases, of no binding force or practical effect whatever,—I cannot too emphatically express my dissent.

“To me it seems a very serious thing to put forth to the people of India a doctrine which renders worthless the solemn words of their Sovereign, and

which converts her gracious promises, which her Indian subjects have cherished for a quarter of a century, into a hollow mockery, as meaningless as the compliments which form the invariable opening of an Oriental letter. Sir Fitzjames Stephen, it seems to me, is not consistent, for he admits, in the course of the document from which I have quoted, that the Proclamation binds the Government of India in regard to the Native Princes and States; but, in regard to Her Majesty's own immediate subjects, it is, according to his view, of no force whatever. It gives no pledge, and it lays down no principle. But, if it binds the Government towards the Princes of India, it binds it to the people of India as well. The document is not a treaty,—it is not a diplomatic instrument; it is a declaration of principles of government which, if it is obligatory at all, is obligatory in respect to all to whom it is addressed. The doctrine, therefore, to which Sir Fitzjames Stephen has given the sanction of his authority I feel bound to repudiate to the utmost of my power. It seems to me to be inconsistent with the character of my Sovereign and with the honour of my country, and, if it were once to be received and acted upon by the Government of England, it would do more than anything else could possibly do to strike at the root of our power and to destroy our just influence, because that power and that influence rest upon the conviction of our good faith more than upon any other foundation, aye, more than upon the valour of our soldiers and the reputation of our arms. I have heard to-day, with no little surprise, a very different argument. The Honourable Mr. Thomas, in a speech in which he did his utmost to stir up the bitterness of a controversy which was approaching a settlement and to fan again the dying embers of race animosity, has asked, Was there ever a nation which retained her supremacy by the righteousness of her laws? I have read in a book, the authority of which the Honourable Mr. Thomas will admit, that 'righteousness exalteth a nation,' and my study of history has led me to the conclusion that it is not by the force of her armies or by the might of her soldiery that a great empire is permanently maintained, but that it is by the righteousness of her laws, and by her respect for the principles of justice. To believe otherwise appears to me to assume that there is not a God in heaven who rules over the affairs of men, and who can punish injustice and iniquity in nations as surely as in the individuals of whom they are composed. It is against doctrines like this that I desire to protest, and it is against principles of this description that the gracious Proclamation of the Queen was directed. So long, then, as I hold the office which I now fill, I shall conduct the administration of this country in strict accordance with the policy which has been enjoined upon me by my Queen and by Parliament. Guided by this policy, it has been the duty of the Government to refuse with firmness what could not be given without an abandonment of principle. But we have not allowed anything which has passed in the heat of this prolonged controversy to deter us from seeking up to the last moment for a solution of the question at issue which could be honourably accepted by ourselves and by our opponents alike. In doing so, we have, I believe, better consulted for the real advantage of all races and classes in the country than if we had rested the reform we are now about to make upon the insecure foundation of a mere exercise of power. And it is in this belief that I now ask you to remit this Bill to a Select Committee, who will consider the amendments which may be proposed, and mould them into the shape best suited to carry out the objects which it is desired to attain. I have one word more to say. I quite accept the proposal of my honourable friend Mr. Evans that the Select Committee should report on Friday, the 18th of this month."

The motion referring the Bill to a Select Committee was then put and agreed to.

The Council adjourned to Friday, the 11th January 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Fort William,
The 18th January 1884.

No. 16.

EXTRACT from the PROCEEDINGS of the COUNCIL

GENERAL of INDIA assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 18th January 1884.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., presiding.

The Honourable J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Honourable T. F. Wilson, C.B., C.I.E.

The Honourable C. P. Ilbert, C.I.E.

" " Sir S. C. Bayley, K.C.S.I., C.I.E.

" " T. C. Hope, C.S.I., C.I.E.

" " Sir A. Colvin, K.C.M.G.

" " H. J. Reynolds.

" " H. S. Thomas.

" " G. H. P. Evans.

" " Kristodás Pál, Raí Bahádur, C.I.E.

" " J. W. Quinton.

" " T. M. Gibbon, C.I.E.

" " Amír Ali.

" " W. W. Hunter, LL.D., C.I.E.

* * * *

Criminal Procedure Code, 1882, Amendment Bill.

The Honourable Mr. ILBERT also presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

* * * *

The Council adjourned to Friday, the 25th January 1884.

D. FITZPATRICK,

* Secretary to the Government of India,
Legislative Department.

Fort William,

The 18th January 1884.

No. 17.

LETTER from the GOVERNMENT of INDIA (Legislative Department), No. 7 of 1884, to the SECRETARY of STATE for INDIA.

MY LORD,

Fort William, the 29th January 1884.

In continuation of our Legislative Despatch, No. 4,* dated the 15th

* This Despatch merely transmitted papers (j), (k), (l), printed on pages 62 to 101.

† Bill (No. II.) to amend the Code of Criminal Procedure, 1882.

instant, we have the honour to forward herewith a copy of the Bill noted in the margin,† in its second stage, and of the Report of the Select Committee thereon.

2. A copy of the Abstract of Proceedings‡ of the meeting of the Legislative Council on the 18th instant, at which the Report was presented, also accompanies.

‡ See above.

We have, &c.,

(Signed)

RIPON.

J. GIBBS.

T. F. WILSON.

C. P. ILBERT.

S. C. BAYLEY.

T. C. HOPE.

A. COLVIN.

No. 18.

No. II.—A BILL to amend the Code of Criminal Procedure, 1882.

X. of 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882,

it is hereby enacted as follows :—

Amendment of Section 25.

1. In Section 25, after the words “British India,” the following shall

be inserted :—

“Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving.”

Addition to Section 191.

2. To Section 191 the following shall be added, namely,—

“When a Magistrate takes cognizance of an offence under clause (c), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session.”

Amendment of Section 443.

3. In Section 443, before the words “Presidency Magistrate,” the words

“District Magistrate or” shall be inserted.

Amendment of Section 444.

4. In Section 444, after the words “Court of Session,” the words “except

the Sessions Judge” shall be inserted.

Amendment of Section 446.

5. (1.) In Section 446, before the words “Presidency Magistrate,” the

words “District Magistrate or” shall be inserted.

(2.) To the same Section the following shall be added, namely :—

“And a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.”

Repeal of Section 450.

6. Section 450 is hereby repealed.

New section substituted for Section 451.

7. For Section 451 the following shall be substituted :—

“451. (1.) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

“(2.) When any such trial before a Court of Session would, in the ordinary course, be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under Sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans.”

New sections to follow Section 451.

8. After Section 451, the following shall be inserted, namely,—

“451A. (1.) In trials of European British subjects before a District Magistrate, any such subject may, in a summons case before he is heard in his defence under Section 244, or in a warrant case before he enters on his defence under Section 256, claim that the trial shall be by a jury composed in manner prescribed by Section 451.

“(2.) If a claim is made under Sub-section (1), in a summons case at the time when the Magistrate proceeds under Section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused under

Section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid ;

“(3.) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury ;

“(4.) In every such case, the Magistrate shall, notwithstanding anything contained in Section 242, before issuing any orders as aforesaid, frame a formal charge.

“(5.) The provisions of Sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this Section.

“(6.) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge, and the accused had been committed to his Court for trial.

“(7.) All Courts may construe any of the provisions referred to in Sub-section (5) or Sub-section (6), in so far as they are made applicable by that Sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

“(8.) Nothing in this Section shall affect the power of the Magistrate to commit an accused person for trial under Section 347 or Section 447.”

“451B. (1.) If an accused person claims to be tried by jury under Section 451A, and in the opinion of the

Transfer to another Court in certain cases.

District Magistrate there is reason to believe that a jury composed in a manner prescribed by Section 451 cannot be constituted for the trial before himself or cannot be so constituted without an amount of delay, expense, or inconvenience, which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under Section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

“(2.) When a case is transferred under this section to a Sessions Judge or District Magistrate he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under Section 451A.”

9. The last sixteen words of Section 459 are hereby repealed; and in the

Amendment of Section 459.

same section, after the words “any Magistrate” the words “or any Judge presiding in a Court of Session” shall be inserted.

10. In Section 462, after the figures “460,” the following shall be inserted,

Amendment of Section 462.

namely, “or before the Court of a District Magistrate or Sessions Judge proceeding under Section 451A, or 451B.”

11. (1.) In section 526, after Clause (d), the following shall be inserted,

Amendment of Section 326.

namely :—

“or,

“(e) that such an order is expedient for the ends of justice.”

(2.) In the same section, after Clause (3), the following shall be inserted, namely :—

“or,

“(4) that an accused person be committed for trial to itself or to a Court of Session.”

New section inserted after Section 526.

12. After Section 526 the following section shall be inserted, namely :—

“526A. If, in any criminal case or appeal before the commencement of the hearing, the public prosecutor, the complainant, or the accused notifies to the

Adjournment on application under Section 526.

Court before which the case or appeal is pending his intention to make an application under Section 526 in respect of

the case, the Court shall exercise the powers of postponement or adjournment given by Section 344, in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or in the case of an appeal before the hearing of the appeal."

13. To Section 528, the following shall be added, namely :—

Addition to Section 528. "A Magistrate making an order under
 reasons for making the same." this section shall record in writing his

14. (1.) In this Act "section" means section of the Code of Criminal Procedure, 1882.

Construction. (2.) All references to that Code made
 in enactments heretofore passed or hereafter to be passed shall be read as if
 made to that Code as amended by this Act.

15. This Act may be called the Criminal Procedure Code Amendment Act, 1884, and it shall come into force on the first day of May 1884.

Short title and commencement.

No. 19.

LEGISLATIVE DEPARTMENT.

WE, the undersigned members of the Select Committee to which the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, was referred, have considered the Bill and the papers noted in the schedule hereto annexed, and have now the honour to submit this our Report.

2. We have amended the provisions of the Bill as introduced on the lines indicated in the proceedings in the Legislative Council on the 7th of December, and the 4th and 7th of this month.

If the amended Bill is passed as it stands—

- (a) The power of appointing Justices of the Peace will remain on its present footing;
- (b) All District Magistrates and Sessions Judges will be *ex-officio* Justices of the Peace, and will have power to try European British subjects;
- (c) District Magistrates will be empowered to pass upon a European British subject a sentence extending to six months' imprisonment, or two thousand rupees fine, or both, that is to say, a sentence twice as severe as they are empowered to pass at present, but any European British subject charged before a District Magistrate will have a right to require that he shall be tried by a jury of which not less than half the number shall be Europeans, or Americans, or both; and
- (d) A European British subject committed for trial before a Court of Session will have a similar right, even in those districts where trials before the Court of Session are not ordinarily by jury.

3. The only other point which it seems necessary to notice in connection with this portion of the amended Bill is, that it is provided by the new Section 451B, which it is proposed (by Section 8) to insert in the Code, that where a jury is claimed before a District Magistrate, and he sees reason to believe that a jury, composed in the manner required, cannot be constituted before himself, or cannot be constituted without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, he may transfer the case for trial to such other District Magistrate

or such Sessions Judge as the High Court may, by general rules approved by the Local Government, or by special order, direct, and the Court to which a case is thus transferred shall, with all convenient speed, try it with the same powers and according to the same procedure as the District Magistrate from whose Court it is transferred.

4. Besides the provisions above described, which may be regarded as in the stricter sense amendments of the Bill as introduced, we have to notice certain additions which we have made to the Bill, and which apply not merely to proceedings against European British subjects but generally. The first of these is that mentioned in the debates in Council above referred to as having been proposed by the Chief Justice of Madras, and it will be found in Section 11, Sub-section (1) and Section 12 of the amended Bill. The former of those sections empowers the High Court to order the transfer of a case under Section 526 of the Code whenever it appears to it that "such an order is expedient for the ends of justice." The latter adds to the Code a provision to the effect that, when before the commencement of the hearing notice is given to the Court before which the case is pending that it is intended to apply for a transfer under Section 525, the Court shall exercise its powers of postponement or adjournment under Section 344 so as to give a reasonable time for the application being made and an order being obtained thereon before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

5. We have also, by Section 11, Sub-section (2) of the Bill, inserted in Section 526 of the Code a clause giving the High Court a power to order a commitment, a power which it is obviously convenient it should have under that section, and which it is not clear that it would be everywhere held to possess under the Code as it stands.

6. Mr. Amír Alí proposed as a further amendment of Section 526 that the High Court should be empowered to order a transfer under that section not merely when it is "made to appear to it" that "a fair and impartial inquiry or trial cannot be had" in the Court from which it is proposed to transfer the case, but also when "there is reason to doubt whether a fair, impartial, or satisfactory inquiry or trial" can be had in that Court. The majority of us, however, are of opinion that the object aimed at in this proposal will be fully attained by Sir Charles Turner's amendment which we have adopted.

7. Another addition which we have made consists in the adoption in part of a further proposal made by Mr. Amír Alí.

Mr. Amír Alí's proposal was to insert the following provisions in the Code, viz. :—

"(1.) Whenever any person is brought before any Magistrate charged with an offence, of which cognizance has been taken under Section 191, Clause (c), or for which the prosecution has been initiated or sanctioned by the Magistrate of the district, such person may claim to be tried by the Sessions Court.

"(2.) Whenever any person is brought or appears before a Magistrate he may claim to be tried by the Court of Session, if the offence of which he is accused is one of those offences specified in the 2nd schedule, column 8, as triable either by the Court of Session or a Magistrate of the First Class."

The object of both provisions, as explained to us by Mr. Amír Alí, was to reduce to a certain extent the complications and dangers which it is apprehended may at times arise under the existing law from the Magistrates having to try cases in which they have collected evidence for the prosecution, and in a certain sense acted as prosecutors. We are fully sensible of the importance of the point thus raised, and we think it well worthy of the consideration of the Government; but we need hardly observe that it would be impossible for us without previously ascertaining the views of the Local Governments to support in their entirety the proposals which would increase the work of the Courts of Session to an extent which it would be difficult to estimate. There is, however, one of the classes of cases comprised in Mr. Amír Alí's amendments, which we

believe to be of comparatively limited extent, and in regard to which, at the same time, there is most ground for the apprehension referred to, we mean cases of which the Magistrate has taken cognizance under Section 191 (c) of his own motion, and in regard to this class we have in Section 2 of the Bill adopted a provision based on Mr. Amír Ali's proposal.

8. Lastly, Mr. Amír Ali has brought forward certain proposals with a view to guarding against abuses of the power of transferring cases conferred on Magistrates by Section 528 of the Code. We have thought it desirable to adopt one of these in Section 13 of the Bill, which adds a clause to Section 582 requiring a Magistrate to record in writing his reasons for orders passed by him under that section; but the majority of us are unable, on the information now before us, to go further in this direction.

9. The publication ordered by the Council has been made as follows:—

<i>In English.</i>		
Gazette.		Date.
Gazette of India	-	10th, 17th, and 24th March 1883.
Bombay Government Gazette	-	15th, 22nd, and 29th March 1883.
Punjab Government Gazette	-	22nd and 29th March, and 5th April 1883.
North-Western Provinces and Oudh Government Gazette.		17th, 24th, and 31st March 1883.
Calcutta Gazette	-	14th, 21st, and 28th March 1883.
Fort St. George Gazette	-	20th March 1883.
Central Provinces Gazette	-	24th and 31st March 1883.
British Burma Gazette	-	31st March 1883.
Assam Gazette	-	31st March 1883.

<i>In the Vernaculars.</i>		
Province.	Language.	Date.
Bombay	Maráthí	19th April 1883.
	Gujrathí	19th April 1883.
	Kanarese	26th April 1883.
Panjáb	Urdú	2nd April 1883.
Bengal	Bengalí	10th, 17th, and 24th April 1883.
	Uriya	22nd and 29th March, and 5th April 1883.
	Hindí	17th and 24th April, and 1st May 1883.
Assam	Bengalí	21st April 1883.

We think that the Bill as now amended may be passed without being republished.

C. P. ILBERT.
J. GIBBS.
A. COLVIN.
G. H. P. EVANS.
J. W. QUINTON.
T. M. GIBBON.
ROBERT MILLER.
AMIR ALI.

The 17th January 1884.

No. 20.

ABSTRACT of the PROCEEDINGS of the COUNCIL of the GOVERNOR GENERAL of INDIA assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 25th January 1884.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G.,
G.M.S.I., G.M.I.E., presiding.
The Honourable J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Honourable T. F. Wilson, C.B., C.I.E.
The Honourable C. P. Ilbert, C.I.E.
" " Sir S. C. Bayley, K.C.S.I., C.I.E.
" " T. C. Hope, C.S.I., C.I.E.
" " Sir A. Colvin, K.C.M.G.
" " H. S. Thomas.
" " G. H. P. Evans.
" " Kristodás Pál, Raí Bahádur, C.I.E.
" " Maharájá Luchmessur Singh, Bahádur, of Darbhangá.
" " J. W. Quinton.
" " T. M. Gibbon, C.I.E.
" " R. Miller.
" " Amír Alí.
" " W. W. Hunter, LL.D., C.I.E.
" " H. J. Reynolds.

Criminal Procedure Code, 1882, Amendment Bill.

The Honourable Mr. ILBERT moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, be taken into consideration. He said :—

" My Lord, this Bill has been amended by the Select Committee on the lines indicated in the last debate in Council. The effect of the amended Bill, so far as it relates exclusively to European British subjects, is explained in the Report of the Committee, and is as follows :—

" (a) The power of appointing Justices of the Peace will remain on its present footing ;

" (b) All District Magistrates and Sessions Judges will be *ex-officio* Justices of the Peace, and will have power to try European British subjects ;

" (c) District Magistrates will be empowered to pass upon a European British subject a sentence extending to six months' imprisonment or two thousand rupees fine, or both, that is to say, a sentence twice as severe as they are empowered to pass at present, but any European British subject charged before a District Magistrate will have a right to require that he shall be tried by a jury of which not less than half the number shall be Europeans or Americans, or both ; and

" (d) A European British subject, committed for trial before a Court of Session, will have a similar right even in those districts where trials before the Court of Session are not ordinarily by jury.

" When a jury is claimed before a District Magistrate, and the Magistrate has reason to believe that a jury composed in the manner required by the law cannot conveniently be constituted to try the case before himself, he may transfer it to another District Magistrate or Sessions Judge. The question as to the particular Court to which the case should be transferred is one which must obviously be determined with reference to administrative considerations, and to the varying circumstances of different districts. Accordingly, it is left to general rules, which are to be framed by the High Court with the approval of the Local Government. But there is power for the

High Court to make special orders in exceptional cases. The Court to which a case is thus transferred is to try it with all convenient speed, and with the same powers, and according to the same procedure, as the Magistrate from whose Court it is transferred.

"The provisions which I have described relate exclusively to European British subjects, but the amended Bill contains a few other provisions which are of general application. Amongst them are two amendments which we have adopted on the suggestion of Sir Charles Turner, the Chief Justice of Madras. In accordance with his suggestion, we have amended Section 526 of this Code by enabling the High Court to make an order of transfer under that section whenever it appears to the Court that such an order is expedient for the ends of justice. The object of the amendment is to make the section somewhat more elastic than it is in its present form. In connection with the same section I may mention a minor amendment, which we have made for the purpose of removing what appears to be an ambiguity in the present wording, by making it clear that the power to order a transfer includes the power to order a committal. We have also adopted the second of Sir Charles Turner's suggestions by requiring the Court below, in cases where it is notified of an intention to apply for a transfer under Section 526, to exercise the power of adjournment under Section 344. It has been objected to this amendment that it may, in some cases, enable an accused person to obtain an adjournment on insufficient grounds, and merely for purposes of delay, or for some other improper reason. The objection is not without its weight, but it must be remembered that almost every safeguard which is given to an accused person is liable to a similar objection, and we have endeavoured to frame the section in such a way as to minimise the risk of its being abused. The application for adjournment must be made before the commencement of the hearing. The adjournment need not be granted until the evidence for the prosecution has been taken, and the Court in granting the adjournment may, under Section 344, impose such terms as it thinks fit as a condition of the boon.

"My honourable friend Mr. Amír Alí brought forward in Committee certain other amendments, the general object of which was, as he explained to the Committee, to reduce the complication and dangers which may arise under the existing law from Magistrates having to try cases in which they collected evidence for the prosecution, and, in a certain sense, acted as prosecutors. We fully admit that the combination in the same person of executive and judicial functions is open to serious objection on principle, and we are most anxious to do all that, with the limited staff at our disposal, we can do to remove or reduce the risk of failure of justice arising from this cause. But at the same time we felt that it would be impossible for us, without further inquiry and consultation with Local Governments and their officers, to insert in the present Bill at this stage any amendment of the Code which would have a wide scope, or might possibly alter to a serious extent the present mode of administering justice in the country. It was for these reasons,—reasons the weight of what I am sure that my honourable friend fully appreciates,—that we were unable to adopt any more than a very small part of the amendments which he has moved. The amendments which were adopted are two. The first enables an accused person, when brought for trial before a Magistrate who has taken cognizance of his case, not on a formal complaint or on a police report, but on a report from some other person, or on the knowledge or suspicion of the Magistrate himself, to require that his case be transferred to another Court. The second requires a Magistrate, when exercising the power given to him under Section 528, of transferring a case from one file to another, to record his reasons in writing. The power is one which is obviously necessary, and the exercise of which forms part of the ordinary administration of justice in the country. But it is given in very general terms, and although it is at present liable to be controlled under the revisional powers given by the existing Code, yet the obligation to record reasons may constitute a further salutary check on any abuse of the power.

"These are the only amendments which the Committee have felt themselves in a position to recommend. I observe that my honourable friend the Mahārāja of Darbhanga has given notice of an amendment to the effect that all persons, Native as well as others, should have the right to claim trial by jury. I

presume that he has given his notice merely for the purpose of placing on record his opinion as to the mode in which the law ought to be altered, and that he has no intention of seriously pressing his amendment on the Council. If he were to do so, the Government would, of course, be compelled to vote against it under present circumstances, for the same reasons as those which prevented the Select Committee from accepting Mr. Amír Alí's amendment. But I hope he will not do so, for an adverse vote, though given on special grounds, may be misconstrued, and the question is one on which I, for one, should wish to reserve my judgment in the amplest manner."

The Honourable Mr. EVANS said :—

"It is desirable that I should explain how there come to be matters in the Bill as amended which are beyond its original scope. The question on which the Government and the European British subjects were at issue was this. It was proposed to give jurisdiction to officers, not being European British subjects, over European British subjects, contrary to the arrangement of 1872. It is necessary to bear in mind that the European opposition was directed against the admission of officers not European British subjects, and that amendments meeting the case of these few Native officers would have been sufficient. That would have been a small measure. It was the Government that insisted that the European British subject should also have restored to him the right of trial by jury before European District Magistrates and before European Sessions Judges in non-jury districts. If this enlargement of the rights of the European British subject should create any administrative inconvenience, it is the Government, not the European British subject, which is responsible. With regard to Section 526A, known as the Turner clause, it was among the modifications approved of by the Secretary of State; I had always thought it of very little use and very unworkable. I suggested that it should be given up in Select Committee. But it was the Government that insisted upon its being retained. If this clause turns out a statutory engine of delay in favour of the long purse, whether European or Native, the responsibility will rest with Government, and not with the European British subject. As regards the other amendments, they were proposed by my honourable friend Mr. Amír Alí and accepted by Government. They have nothing to do with European British subjects more than with Natives. They are small attempts to deal with great evils in the Code, which can never be got rid of unless the executive and judicial functions are completely separated—a step which will involve a very serious change in the administration of the country. Whether these small amendments will in practice do more harm or more good, it is for the local officers to say. The responsibility for these clauses also rests with the Government. In the opinion given by that very experienced District Officer, Mr. Edgar, he shows that the good working of the great changes made in 1872 was due to their being made by consent. Sir Fitzjames Stephen and his colleagues were wise in making them by consent, and were justified by the result. I hope that this consent settlement may be equally successful. Its merit is that, however great its imperfections may be, it restores peace. I hope no one will rake up the ashes of this dead fire, and that cordiality will be restored between the Government and the Europeans and between the Europeans and the Natives. Unless these great elements work cordially together for the welfare of the country, its future prosperity will undoubtedly suffer."

The motion was put and agreed to.

The Honourable the MAHÁRÁJÁ of DARBHANGÁ said :—

"I do not know whether I am quite in order in moving this amendment. I would have much sooner preferred that the motion would have come from some one of the members who were in charge of the Bill in Select Committee. Objection might certainly have been taken to my amendment if the Bill had now stood in its original shape. This Bill was originally supposed to be a Bill to amend the Criminal Procedure Code as regards the exercise of jurisdiction over European British subjects. This, in fact, was the name of the Bill when it went to Select Committee. But now I see that it comes out simply as a Bill to amend the Criminal Procedure Code; no special mention is made of European British subjects. I therefore am led to believe that honourable members have now a right to discuss any section of the Criminal Procedure

Act that they may wish. The Bill, as originally named, intended to do away with race distinctions altogether. The original Bill has been, therefore, in a way withdrawn altogether. It has been certainly very much modified in Select Committee, and it can be now supposed to be a Bill to give to every European the right of trial by jury in almost every case. My object is certainly not to question the decision of the Select Committee in that respect. I simply wish that this right should be extended to Indian British subjects as well, but with certain restrictions. My amendment does not mean that Natives of India should have in every case the privilege of trial by jury. I simply wish that in all Sessions cases the Natives of India should have this privilege; and I do not at present mean to move that they should have the right of demanding trial by jury in cases before the District or any other Magistrates. I am perfectly well aware that it would be necessary to get the opinions of the Local Governments on a general question of this sort. In many places, it might be perfectly impossible to get enough proper men to form juries. In other places, on the other hand, it might lead to an increase of expenditure. I simply wish that in every Sessions case the accused should have the option of being tried by jury. I do not go so far as to ask the Government to put the European and the Indian subjects on terms of entire equality, as I think a proposal of this sort would not only be unreasonable, but is never likely to be listened to. If the Indians are a conquered race and the Europeans are conquerors, it is preposterous to think that the conquered race and the conquerors can ever legally be put on terms of equality. I do not wish to rob the Europeans of any of their privileges. I have now to move that, after Section 2 of the Bill, the following section be inserted:—

“ 3. To Section 269, the following proviso shall be added, namely:—

- “ ‘Provided that in trials before a Court of Session, if before the first assessor is appointed, the accused requires to be tried by a jury, the trial shall always be by a jury.’ ”

The Honourable Mr. HUNTER said:—

“ My Lord, I entirely sympathise with my honourable friend, the Mahārājā of Darbhanga, in his desire to see the system of trial by jury extended to the Natives of this country. But I think that the present debate does not afford a suitable occasion for asking the Council to consider so large a proposal. I for one could not give a decision on such a scheme without learning the opinions of the Local Governments; and I think that this view will be shared by those members of the Council who are most anxious to effect the removal of distinctions of race in matters of judicial procedure. The question of the extension of trial by jury has been deliberately placed by the legislature in the hands of the Local Governments. It would be impossible for the Council to reopen this difficult question without referring to those Governments. I shall be glad to see the question thus referred, and I hope that the reference will result in an extended application of the jury system. But I should strongly object to delay the passing of this Bill until the reference was made. To accept the Mahārājā of Darbhanga's amendment would involve such a delay, and would prolong the political agitation which the passing of this Bill is intended to close. If the Mahārājā insists on pressing his amendment, I must therefore oppose it. But in the interests of the Native community, I would ask my honourable friend not to press his amendment. I think the wisest course for him, and for those of us who sympathise with his views in this matter, is to trust to the well known desire of your Lordship to extend as soon as possible, and as widely as practicable, the system of trial by jury to all classes of Her Majesty's subjects in India.”

The Honourable Mr. AMÍR ALÍ said:—

“ My Lord, though I am inclined to think there are considerable difficulties in the practical working of the present proposal,—difficulties which induced me, I must confess, to refrain from bringing the matter forward in Committee,—I believe the Honourable the Mahārājā of Darbhanga's amendment is perfectly correct in theory; and, therefore, if he presses it, I shall support the amendment. There are many assessor districts at the present moment quite as advanced and fitted to receive the jury system as the so-called jury districts. In their cases, there would be no difficulty whatever. It is only where the

people are not sufficiently advanced to understand the nature of a jury trial, or to appreciate the duties devolving upon jurors, that there may arise some difficulty. But I should think that in such instances the difficulties can be minimised by administrative arrangements. Personally I am not an ardent advocate of the extension of the jury system to those parts of the country which are not prepared for it. In those places, a trial by jury is not always to the advantage of the accused; for, while in trial with assessors the accused has a right of appeal to the High Court on law as well as facts, in the case of a conviction by jury there is no appeal, except on points of law. Considering the difficulties which surround the question, perhaps the Honourable Mahārāja may be inclined not to press the amendment."

The Honourable RAJ KRISTODÁS PÁL said :—

"Bearing in mind what fell from your Lordship the other day, deprecating the raising of the general question of extension of jury trial for Natives, I thought it proper not to bring forward any amendment or motion on the subject. I would have remained silent if my honourable friend the Mahārāja of Darbhanga had not brought forward his motion. This subject, however, being mooted in Council, I consider it my duty to support the motion. I need not remind honourable members of Council that, in a country where the panchayat system has been in force from time immemorial, trial by jury cannot be said to be an exotic. The people are familiar with the institution, and, although it has prevailed here under a different name, its practical working has been the same here as in more civilized countries. It is unnecessary for me to dwell on the well known advantages of the jury system, but it is not from any sentimental considerations, or a regard for tradition that I support the institution. I do hold that jury trial is really the bulwark of the liberty of the subject, and that it is a material safeguard of the interests of justice. How the jury system has been working in Bengal is, I believe, well known to the honourable members of this Council. I am well aware that many executive officers are not much in favour of trial by jury, but we should not forget that not a few of them are apt to push their vigour beyond the law. The question lately came, I observe, before the Lieutenant Governor of Bengal in connection with the police administration report, and I will, with the permission of the Council, read an extract from the Resolution of His Honour showing how essential is the jury system to the interests of justice, even if thereby now and then miscarriages of justice occur. His Honour remarks :—

" 'The unwillingness of juries to convict in serious cases involving the issues of life and death may sometimes have been the cause of failures of justice, which would not have occurred had the person been tried by a Judge and assessors. What is now complained of is not, it must be remembered, a new thing. It has been a charge against the system of trial by jury from the first; but it by no means follows that the unsatisfactory results in the trial of murder cases by jury is solely owing to the unwillingness of the jurors to convict in a case in which a capital sentence would probably be passed. It is in the experience of the Lieutenant Governor that jurors look with much greater strictness into the evidence and to the conduct of the police officers than unassisted Judges used to do; and it is much better that it should be so, notwithstanding occasional failures of justice. The over-scrupulousness of juries, if such it may be called, should have its effect on the action of the police and upon the investigations made in Magistrates' Courts, with results which can be only beneficial.'

"Such is the opinion of the responsible head of the Bengal Government, and I believe that all right-minded men who value jury trial will come to the same conclusion. In fact, I look upon the jury system as a most useful instrument of self-culture and self-discipline in the administration of the affairs of a nation. It has, however, been urged that all parts of the country are not equally ripe for jury trial, and that, therefore, the time has not yet arrived for the universal extension of the system to the country. Now, my reply is, that when the wilds of Assam have been declared to be fit for jury trial, there can scarcely be any part of the country in Bengal, Northern India, Madras, or Bombay, which cannot be said to be sufficiently advanced for the reception of this boon. I am quite aware that there may be backward parts where jury trial would not be an unmixed blessing, but as civilization is progressing and

education is advancing the people of those districts will gradually acquire that knowledge and experience which will enable them to enjoy the privilege without injury. Then it is contended that, as the motion involves what I may call a big change, it ought not to be passed without reference to the Local Governments. I confess I do not look upon the motion in that light. It is true that it contemplates a material change by converting assessor districts into jury districts, but, as I have already said, if the Government of Assam could extend the jury system to all the territories under it, I do not see why this Council, knowing the position of the different provinces, cannot extend the system of jury trial to the whole country without further reference to the Local Governments. I go further. I submit that the Bill before us introduces large and radical changes into the system of jury trial as regards European British subjects; that is to say, it gives European British subjects the right to claim a trial by jury before a District Magistrate, which they had never before enjoyed, and yet it has been considered unnecessary to refer the matter to the Local Governments for opinion. So if, in introducing such a big change in respect to the trial of European British subjects, it has not been considered necessary to consult the Local Governments, surely this Council can consistently take action in this matter without reference to Local Governments. I think it is due to the Mahārājā to point out that his motion does not at all affect the agreement or arrangement made with regard to the trial of European British subjects. As far as I understand him, he leaves that question where it is, and does not wish to interfere with or disturb the arrangement made. He simply asks that the Indian subject tried in a Sessions Court should have the privilege of demanding a jury just as the European British subject would be entitled to do. In this respect he claims an equality between the European and the Native which I do not think will be considered unreasonable. In fact, from what has fallen from the previous speakers, I perceive that their sympathy is with the motion, though they consider that the present time is not quite opportune for pressing it. Then it may be said that this motion does not come quite within the scope of the Bill because it does not form part of the arrangement made with the opponents of the measure. Now, the honourable and learned mover of the Bill has already pointed out that the Select Committee had admitted certain amendments which were outside the agreement. In the same spirit this matter may be entertained, though it is outside the agreement. The object of the motion, as I take it, is to improve the administration of justice, and surely whatever may tend to improve the administration of justice deserves the consideration of the Council. How the administration of justice will be improved I think the extract which I have just read from the Resolution of the Lieutenant Governor clearly explains. I hold that the present motion is quite consistent with the scope of the Bill before us, firstly, because it aims at the establishment of an equality in the eye of the law between the different classes of Her Majesty's subjects, which has been the primary object of the Bill, and secondly, because it is a proposal for the improved administration of justice, which, I submit, is also one of the objects of the Bill. If this motion be carried, I need hardly say that the European British subject will lose nothing, but that the Indian subject will gain a great deal, and this is an important point, worthy of the consideration of the Council. I cannot conclude without saying that my countrymen in all parts of the country lay great stress upon jury trial; that they have submitted an almost universal prayer that, while the jury system is to be conceded to the Europeans, it shall also be extended to them without limit or distinction. It pleases me to say, if I may use the expression, that, in carrying on the controversy regarding this Bill, the tone and temper of my countrymen have been most moderate and loyal, and this consideration will, I hope, induce honourable members of Council and your Lordship to extend your generous consideration to the one prayer of the Native community on a point regarding which they feel so keenly and earnestly."

The Honourable MR. EVANS said :—

"The Government of India has already intimated, and apparently on sufficient grounds, that it is not possible for them to consider this important question at this stage. It is therefore, under the peculiar circumstances of this Bill, impossible for me to consider or to vote for any amendment which is

not accepted by the Government of India. Everybody knows, as far as we are concerned, that the shape which this Bill now assumes is a matter of consent on both sides, and, if I were to take into consideration any matter which is not consented to by the Government of India, I should feel that I was departing from that arrangement."

The Honourable Mr. ILBERT said:—

"I cannot say that my honourable friend the Mahārājā of Darbhanga is out of order in moving the present amendment, and therefore I do not take any technical objection to the motion; nor can I say that it is unnatural that he should give notice of the amendment which stands in his name. But having said thus much, I do not know that I can or need do anything more than repeat the substance of what I have said already. I must under existing circumstances entirely decline to follow my honourable friend into the large question which he has raised. My friend the honourable Mr. Hunter has very properly directed attention to the present state of the law on the subject. That law is to be found in the section of the Code of Criminal Procedure which says that the Local Government may, by order in the official 'Gazette,' direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district. Whether the amendment which has been brought forward by my honourable friend the Mahārājā of Darbhanga is or is not based on a correct theory, and whether it is advisable or practicable to apply to all cases and in all districts the extension of the jury system which he advocates, or only to particular cases and in particular districts, and, if so, to what particular cases and districts, is a question on which, under existing circumstances, I must decline to pronounce an opinion. I have not sufficient information before me to consider the administrative questions thus raised, and therefore I must content myself by saying that the amendment is one which we cannot possibly accept."

His Excellency the PRESIDENT said:—

"I do not propose on the present occasion to enter into the general question of the merits of the jury system or the desirability of its wider extension in this country. I desire to join my voice to those of Mr. Hunter and Mr. Amīr Ali in asking my honourable friend the Mahārājā of Darbhanga not to press this proposal on the present occasion. I think that he will certainly not advance the object that he has in view by taking that course. The question which he has raised is one of great importance; it is one which I readily admit deserves very full and careful consideration; but it would be, in my judgment, impossible for the Government to accept at this, the last, stage of the Bill an amendment which would have so wide a scope as that which has been moved by my honourable friend, without having had time to consider the subject in all its bearings, or to consult Local Governments and others whose opinions are to be taken upon a large question of this description. If such a course were open to me upon this occasion, I should like to move what is called in Parliament 'the previous question.' But no such thing can be done in this Council, and I can, therefore, only say the Government is not prepared to express an opinion now. I admit that the fact which the honourable gentleman, Mr. Kristodās Pāl, has alluded to, that there appears to be a strong feeling in the country in favour of the extension of the jury system, is a matter which of itself deserves our consideration; but to oblige the Government to vote against this motion at this time would be unduly to prejudice the further examination of the subject. I make no complaint on the score of regularity against my honourable friend the Mahārājā of Darbhanga for having raised this question, and thereby drawn additional attention to it; but I confess that I should very much regret that, by dividing the Council, he should force the Government to pronounce an opinion upon it prematurely, and at the time when they have not the necessary information before them to enable them to form a deliberate judgment upon it. That the question is deserving of consideration I entirely admit, but that it would injure the cause which the Mahārājā has at heart if he were to press for a motion on the present occasion, I cannot for a moment doubt."

The Honourable the MAHARAJA of DARBHANGA here withdrew his amendment.

The Honourable Mr. ILBERT moved that the Bill, as amended, be passed.

The Honourable Mr. AMÍR ALÍ said :—

“ My Lord, I hope I am in order in offering a few remarks on this motion, in explanation of my reasons for not moving any amendments on the basis of the proposals I put forward in Committee. I have carefully abstained from making any suggestion which was likely to disturb the arrangement in accordance with which the Bill has been amended, or to throw any difficulty in the way of an immediate settlement of the question that has engaged public attention for the last eleven months. Personally, my Lord, I think your Lordship's Government ought to be congratulated in having successfully maintained the principle of the Bill with the consent of the European community. It has been said that, in this matter, the wishes of the European community should not have been considered. I cannot bring myself to agree in this view. No Government can wisely overlook or disregard the sentiments of any class of its subjects, and however much inclined I may feel to deprecate the violent expression of these sentiment in this particular case, I cannot help thinking that in the interests of good government they had to be taken into consideration, and such weight given to them as was consistent with the declared policy of British rule and did not conflict with the just rights of the other subjects of Her Majesty. It is, therefore, with a sense of relief that I view the approaching settlement of this question. With reference to the other points, I desire to say just a few words. There were two objects which I had principally in view in the discussions in Select Committee—firstly, to see that the great safeguard which was being provided for the European British subjects of Her Majesty against the illegal exercise of judicial powers may not be turned to the disadvantage of the Natives of India; and secondly, to obtain in favour of the latter certain amendments in those provisions of the Criminal Procedure Code which, owing to the combination of judicial and executive functions in the Mufassal magistracy, press heavily upon all classes of the community, resulting frequently in scandalous miscarriage of justice. My Lord, the dangers and difficulties which arise from the combination of the two functions in the Mufassal are not imaginary. Having these two objects in view I brought forward certain proposals which have received only a partial recognition. With reference to the view of the majority of the Committee regarding the safeguards against any failure of justice, owing to the large extension of the jury system in European cases, I have not thought it right to dissent from my honourable colleagues, as I felt sure, should the apprehensions which are entertained in certain quarters prove true, it will be the duty of Government to correct the evil by applying the most suitable remedy, and it is to be hoped that in such an eventuality all sections of Her Majesty's subjects in this country would cordially join in urging upon the Government to place the administration of criminal justice upon a more satisfactory footing. As regards the second object, I must express my regret that my colleagues did not see their way toward accepting my proposal in its entirety. The amendment I proposed would not have increased the work in the Sessions Court to any appreciable extent, while it would have secured an important safeguard against the inconvenience and dangers arising from the combination of judicial and executive functions on the part of the Mufassal magistracy. My Lord, the satisfactory administration of criminal justice in the Presidency towns is a sufficient proof of the wisdom of the policy by which the two functions are kept apart, and I have reason to believe that, were the same system in vogue in the Mufassal, the recent agitation would have lost much of its force. I was, however, met with the objection that the proposal I made involved a degree of change which required a more careful consideration than the Committee were in a position to give in the short space of time at their disposal. The extent, therefore, to which my proposal has been adopted is small,—too small in fact to be of any practical value,—but I regard it as a step towards that disjunction of the executive and judicial functions upon which in future must depend the best security of the people in the administration of justice. And in view of the recommendation embodied in the report, which I look upon as the most important and valuable concession to the Natives of India, I have thought it right to refrain from bringing forward the proposal in Council. I venture to hope, my Lord, that this recommendation will receive the earnest and early consideration of Government, and I am sure that my countrymen, knowing the anxious desire which animates your Lordship's Government to deal equitably

by all classes of Her Majesty's subjects, will rest content for the present with the small modification which has been made in one of the most obnoxious sections of the Criminal Procedure Code. My Lord, it is a distinguishing feature of your Lordship's administration (in saying this, I speak the mind of the Natives of India at large) that for the first time under British rule the wants and wishes of the people have received *due* consideration; and in view of the anxiety prevailing among all classes of the Native community for some substantial improvement in their favour in the criminal law of the country, I trust that the recommendation of the Select Committee will not be allowed to remain a dead letter."

The Honourable RAÍ KRISTODÁS PÁL said:—

"My Lord, before the motion is formally put to the vote, I ask your Lordship's permission to say a few words. I feel it would be wrong on my part to raise a fresh discussion upon a subject which has been already discussed threadbare, particularly as the Bill has reached the stage when no discussion will avail one way or another. Remembering also the deliberate decision of Government that the Bill must be based on the lines of the agreement entered into, I could see no room for any substantial amendment which would prove beneficial, and I am confirmed in my opinion by the proceedings of this day. At the same time, in justice to myself, I must candidly confess with due deference that the provisions of the Bill as amended by the Select Committee, as far as I can see, are not calculated to remove the apprehensions which I ventured to express on the last occasion. It cannot be denied that while race distinction is removed in one direction, that is to say, as regards a very small class of Native officers, it is deepened in another direction, that is to say, as regards the Native population at large, that the anomaly of jury trial in petty cases, in cases in which a jury is admitted to be ridiculous, remains all the same, if the District Magistrate chooses to try such cases; that the cure of the invidiousness of the law will depend on the forbearance of the Magistrate, if he will not try petty cases, and of the accused, if he will not claim a jury in such cases; that the risk of failure of justice at the hands of a dominant and sympathising jury is not safeguarded in any way, and that the old evils to poor complainants of the transfer of cases to distant Courts, almost amounting to a denial of justice, from districts where a jury may not be available, will be revived in all their rigours. But I will not prolong a dying controversy by raising fresh objections. Your Lordship was pleased to declare, in winding up the debate on the 7th instant, that a failure of justice such as I had apprehended would be an intolerable evil, that if your Lordship had anticipated it, you would not have been a party to the arrangement made, and that should failure of justice or other grave evils hereafter arise out of the proposed system, it would be the duty of the Government of the day to apply adequate remedies. I accept this assurance of your Lordship with due submission.

"My Lord, if I have correctly gauged the opinion of my countrymen on this subject, there seems to be a deep conviction among them that the fiery ordeal through which they have passed during the last ten months has brought forth no adequate result, that if they have gained some slight advantages on the one hand, they have lost much more on the other, that the sudden and sad turn which this business has taken at the last moment has fallen like a thunderbolt upon them, and filled them with gloom and dismay. But I should not despond. The main principles of this Bill, though within very narrow limits, being affirmed, I fervently hope that it will prove the precursor of more substantial and abiding reforms. At some favourable time hereafter, when the present storm of passionate feelings and race animosities, it is to be hoped, will have passed away, when practical experience will have satisfied even the most thorough going representatives of the domineering class that Native Judges and Magistrates mete out even-handed and uncoloured justice, some hopeful mariner in charge of the vessel of the State, following the signal planted to-day, may steer his course in the same onward path, and give a wider effect to the high hopes and honourable aspirations with which the controversy of the past few months, I am bound to say, has filled the heart of the nation. It is not necessary for me to formulate these hopes and aspirations. Suffice it to say that the nation anxiously looks forward to the establishment of a complete equality in the eye of the law

between all classes of Her Majesty's subjects, without distinctions of race and religion, to the unconditional extension to Her Indian subjects of the same jury trial that has been accorded to her British-born subjects—for it is the bulwark of the liberty of all subjects,—to the removal of the present barrier to the admission into the Covenanted Civil Service through the door of competition, and of the stigma which unjustly attaches to the statutory civilians, by combining, as I conceive, competition with nomination, and to the development of those solid measures of progress which will raise the Native Indians to the level of the European British subjects. The passage of the Bill marks three distinctive and important points, firstly, that the Queen's Proclamation, the Magna Charta of the people of India, has been vindicated with a force, emphasis, and earnestness with which it had never before been vindicated; secondly, that a step, albeit a short one, still a well defined one, has been taken in putting the higher order of covenanted civilians, both European and Native, on a footing of equality which no future Government will dare retrogress; and thirdly, that, if my countrymen prove equal to the occasion, the onward policy is sure to advance. We are certainly more concerned with the present than with the future; but man does not live for the present alone. His manhood will not progress if he does not think of the future, care for the future, live for the future. Relying on the future, I give my adhesion to the present Bill."

The Honourable Mr. EVANS said :—

"I had not intended to add any observations to those which I have already had the honour to address to the Council to-day, but it is entirely impossible that I should sit silent after the remarks which have been made by the Honourable Messrs. Amír Alí and Kristodás Pál. I do not intend to follow the last speaker into those matters of controversy which he has freely touched upon, but it is necessary to say one thing most distinctly. I understood the Honourable Amír Alí to say that the so-called principle of the Bill was assented to by the European community. I thought I had made it clear on the last occasion—but I will make it clearer now—that I have assented to nothing of the kind, nor have the Europeans generally assented to anything of the kind. They have assented to the passing of this Bill, in order to procure peace, but they have retained their own view of their own privileges and rights; and I thought I had made it clear that we no more affirmed the Government view than the Government affirmed our view. My understanding of the settlement is, that it is intended to procure peace, and if that stands, well and good. But if my honourable friend's countrymen are going to contend that they are entitled to maintain this supposed concession of I know not what principle, and to deprive us of the other portion of the settlement, as he very clearly intimated it is his intention some day or another to do, then I say that the principles of law and natural justice are that, if the settlement is to be ripped up, the parties go back to the *status quo ante*. If any pilot of the future, induced by any such suggestion as this, be so unwise as to guide the vessel of State upon the rock towards which it has lately been steered, then most undoubtedly the Europeans will remember and claim the principles of law and justice; and if any endeavour be made to rip up this settlement, they will take their stand upon the settlement of 1872. God forbid that these things should come to pass. But it is necessary for me to say emphatically that we have not conceded a principle of any kind, or to any extent whatever, but that we hold ourselves free to defend our rights if attacked, and are ready to do so."

His Excellency the PRESIDENT said :—

"I stated so fully my views upon this subject in the course of the discussion which arose upon the motion that this Bill be referred to a Select Committee, that I had no intention when I came into this room of making any further observations upon the matter. To the views which I then set forth I entirely adhere, and it is quite needless that I should repeat them now. The Honourable Ráí Bahádúr Kristodás Pál has repeated briefly some objections which he raised in the former discussion to the practical working of the arrangements now embodied in this Bill. I replied upon that occasion to the remarks

which he then made, and as I have seen no reason since then to modify the views which I expressed, I will not take up the time of the Council by repeating what I said at that time. The honourable gentleman has remarked that the long controversy, which has existed unhappily now for several months has brought to the Natives of the country no adequate result. From that I must entirely dissent. As I stated on the former occasion, I hold that the results which will be secured by this measure are results of the highest importance to the Native community in this country. I then pointed out how the principle upon which this Bill was founded had been maintained, acknowledged, and secured; how a disqualification strongly felt by some of the highest Native Magistrates and Judges in this country would be by this Bill removed, and how the policy which was laid down fifty years ago, and has been steadily pursued since then by successive Governments, has been once more vindicated and affirmed. I believe that these results are of the highest importance to the countrymen of the honourable gentleman, and I also venture to think that, though there may be many who may be inclined to criticise—and it is quite fair that they should criticise—the settlement now made, the general feeling of the Native community is that the Bill does uphold and advance a principle to which they attach the highest importance. I cannot, therefore, agree with the honourable gentleman in the opinion that those who have supported this Bill and this policy have lost under the recent arrangements more than they have gained. I must entirely adhere to the opinion which I expressed on the previous occasion, that the gains have been large and important, and that, as I then said, nothing has been taken from the Natives, though an additional safeguard has been given to the European community. I do not wish to prolong this discussion. The last thing that I should desire would be to renew for a moment the controversy of the last few months. I earnestly trust that that controversy may now be brought to a close. I hope and believe that the system established by this Bill will be found to work well, and nothing shall be wanted on the part of the Government to secure its successful operation. I might content myself with these remarks, which I have felt bound to make in order to defend the policy, and to point out the results and the gains, of the measure which is now about to be passed. But I must, before I conclude, say one or two words on the remarks which fell from the Honourable Mr. Amír Alí. And, in the first place, while I thank him very much for the manner in which he spoke of the labours of the present Government of India, I cannot take either to myself or to my colleagues the compliment which he was kind enough to pay us. He said that, under this Government for the first time, the desires and wishes of the Natives had received due attention. That is a statement to which I cannot subscribe, when I recollect the many eminent men who have preceded me in the office which I now fill, and when I know how many previous Governments have worked earnestly for the benefit of the people of this country. Each day has its own tasks; the tasks of twenty years ago were not the tasks of the present moment. We have endeavoured to do our duty in the position in which we have found ourselves placed, and we shall continue to do so; but I must deprecate any comparison between the labours of the present Government and the labours of those which have preceded it. With respect to the other remarks of the Honourable Mr. Amír Alí, I only wish to say this,—the Government naturally attach great weight to the opinions expressed in the report of a Select Committee, composed as the Select Committee on this Bill has been; and when I find that Select Committee saying, in reference to one of the suggestions of Mr. Amír Alí, ‘We are fully sensible of the importance of the point thus raised, and we think it well worthy of the consideration of the Government,’ it is unnecessary for me to say that such an observation coming from such a source will receive the fullest and most careful consideration of the Government. And now I have no more to say. I rejoice that this question is brought to a conclusion, and I trust that conclusion is one which, when the heat of this controversy has died away, will enable this measure to work smoothly and satisfactorily. I think that to attain that end was an object which the Government did well to desire. We were not prepared, and we shall never be prepared, to sacrifice the principles for which we have contended, for we believe them to be the true principles of English government in this country; but within the limits of those principles it was our duty to seek for any settlement which would secure a general acquiescence at

least in the arrangements which we proposed to make. That object has been attained, and if it is honestly and faithfully kept in view on both sides, it will, I have every confidence, be found that the arrangements now made are consistent alike with the honour of the Government and the advantage of the country."

The motion was put and agreed to.

No. 21.

LETTER from the GOVERNOR GENERAL of India (Legislative Department), No. 3 of 1884, to the SECRETARY of STATE for INDIA.

MY LORD,

Fort William, the 29th January 1884.

IN conformity with the provisions of Section XXI. of the Indian Councils Act, I have the honour to forward to your Lordship an authentic

* Act No. III. of 1884 (an Act to amend the Code of Criminal Procedure, 1882).

copy of the Law, noted in the margin,* which has been passed by the Council of the Governor

General of India for making Laws and Regulations, and to which I have signified my assent.

† Statement of Objects and Reasons, dated 30th January 1883. (See page 4 of Command Paper No. 3545 of 1883.)

Abstracts of Proceedings, dated 2nd and 9th February, 9th March, and 7th December 1883, and 4th, 7th, 18th, and 25th January 1884. (See Command Papers No. 3545 of 1883, page 4, No. 3650 of 1883, page 3, and pages 42, 103, 122, 146, and 152 of this paper.)

2. In accordance with the instructions contained in your predecessor's Despatch No. 61, dated 21st December 1869, a copy of the papers noted in the margin,† relating to the Act, accompanies.

I have, &c.,
(Signed) RIPON.

No. 22.

ACT No. III. of 1884.

Passed by the GOVERNOR GENERAL of INDIA in COUNCIL.

(Received the assent of the Governor General on the 25th January 1884.)

An Act to amend the Code of Criminal Procedure, 1882.

X. of 1882.

WHEREAS it is expedient to amend the Code of Criminal Procedure 1882, it

is hereby enacted as follows :—

Amendment of Section 25.

1. In Section 25, after the words "British India," the following shall be

inserted :—

"Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving."

Addition to Section 191.

2. To Section 191 the following shall be added, namely,—

"When a Magistrate takes cognizance of an offence under Clause (c), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session."

Amendment of Section 443.

3. In Section 443, before the words "Presidency Magistrate" the words

"District Magistrate or" shall be inserted.

Amendment of Section 444.

4. In Section 444, after the words "Court of Session," the words "except

"the Sessions Judge" shall be inserted.

Amendment of Section 446.

5. (1.) In Section 446, before the words "Presidency Magistrate," the words "District Magistrate or" shall be inserted.

(2.) To the same section the following shall be added, namely,—

"And a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both."

Repeal of Section 450.

6. Section 450 is hereby repealed.

New section substituted for Section 451.

7. For Section 451 the following shall be substituted:—

"451. (1.) In trials of European British subjects before a High Court or

Jury or assessors before High Court or Court of Session.

Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be,

any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

"(2.) When any such trial, before a Court of Session would, in the ordinary course, be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under Sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans."

New sections to follow Section 451.

8. After Section 451 the following shall be inserted, namely,—

"451A. (1.) In trials of European British subjects before a District Magistrate, any such subject may, in a

Right of European British subject to claim jury before District Magistrate.

summons case before he is heard in his defence under Section 244, or in a

warrant case before he enters on his defence under Section 256, claim that the trial shall be by a jury composed in manner prescribed by Section 451.

"(2.) If a claim is made under Sub-section (1) in a summons case at the time when the Magistrate proceeds under Section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused, under Section 256, to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

"(3.) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him, from the evidence recorded, that there will be a sufficient case to go before a jury.

"(4.) In every such case the Magistrate shall, notwithstanding anything contained in Section 242, before issuing any orders as aforesaid, frame a formal charge.

"(5.) The provisions of Sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

"(6.) The provisions of this Code, relating to the procedure in a trial by jury before a Court of Session, shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

"(7.) All Courts may construe any of the provisions referred to in Sub-section (5) or Sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

"(8.) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under Section 347 or Section 447."

"451B. (1.) If an accused person claims to be tried by jury under Section 451A, and, in the opinion of the

Transfer to another Court in certain cases.

District Magistrate, there is reason to

believe that a jury composed in manner prescribed by Section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under Section 451A, transfer the case for trial to such other

District Magistrate or to such Sessions Judge as the High Court may from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

“(2.) When a case is transferred under this section to a Sessions Judge or District Magistrate he shall, with all convenient speed, try it with the same powers (including the power of commitment), and according to the same procedure, as if he were a District Magistrate acting under Section 451A.”

9. The last sixteen words of Section 459 are hereby repealed, and in the

Amendment of Section 459.

same section, after the words “any Magistrate,” the words “or any Judge presiding in a Court of Session” shall be inserted.

10. In Section 462, after the figures “460,” the following shall be inserted,

Amendment of Section 462.

namely,—“or before the Court of a District Magistrate or Sessions Judge proceeding under Section 451A or 451B.”

Amendment of Section 526.

11. (1.) In Section 526, after Clause (d), the following shall be inserted, namely,—

“or,

“(e) That such an order is expedient for the ends of justice.”

(2.) In the same section, after Clause (3.), the following shall be inserted, namely,—

“or

“(4.) That an accused person be committed for trial to itself or to a Court of Session.”

New section inserted after Section 526.

12. After Section 526 the following section shall be inserted, namely,—

“526A. If in any criminal case or appeal, before the commencement of the hearing, the public prosecutor, the complainant, or the accused notifies to the

Adjournment on application under Section 526.

Court before which the case or appeal is pending his intention to make an application, under Section 526, in respect of the case, the Court shall exercise the powers of postponement or adjournment given by Section 344, in such a manner as will afford a reasonable time for the application being made, and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.”

Addition to Section 528.

13. To Section 528 the following shall be added, namely,—

“A Magistrate making an order under this section shall record in writing his reason for making the same.”

X. of 1882.
Construction.

14. (1.) In this Act “section” means section of the Code of Criminal Procedure, 1882.”

(2.) All references to that Code made in enactments heretofore passed, or hereafter to be passed, shall be read as if made to that Code as amended by this Act.

Short title and commencement.

15. This Act may be called the Criminal Procedure Code Amendment Act, 1884; and it shall come into force on the 1st day of May 1884.

This Bill was passed at a Meeting of the Council of the Governor General of India for the purpose of making Laws and Regulations, on the 25th day of January 1884.

(Signed) RIPON,
President.

I assent to this Bill.

(Signed) RIPON,
Governor General.

The 25th January 1884.

(An authentic copy.)

(Signed) D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

No. 23.

LETTER from the GOVERNMENT of INDIA (Legislative Department),
No. 11 of 1884, to the SECRETARY of STATE for INDIA.

MY LORD,

Fort William, the 29th January 1884.

IN our Despatch in the Legislative Department, No. 35 of 1883, dated the 10th August 1883, we informed your Lordship of the result of our consideration of the Reports of Local Governments, and other papers connected with the Bill to amend the Code of Criminal Procedure, which was introduced into the Legislative Council on the 2nd February last, and we explained the nature of the modifications which we were prepared to recommend in the Bill as originally framed. Your Lordship replied on the 8th November to this communication, and the Despatch in which you signified your concurrence in the propriety of modifying the Bill in the manner which we had proposed reached us on the 1st December just as the Government had re-assembled in this city.

2. Up to that time the only demand made by the opponents of the Bill was that it should be withdrawn, and the theory put forward was that a European British subject had a right "to be tried on criminal charges by European British Magistrates and Judges." This right has been repeatedly asserted in various speeches and documents, but the particular words we have quoted are taken from the principal memorial sent in by the Anglo-Indian Defence Association, which forms enclosure No. 49 to our Despatch of the 10th August, and they show clearly the nature of the claims with which we had to deal when we were considering in August last the course which we ought to adopt with respect to the Bill. We had at that period nothing before us which could lead us to suppose that anything short of a withdrawal of the Bill and a complete abandonment of the principle upon which it was founded would give any satisfaction to those who were opposing the measure, and we could therefore only submit to your Lordship such amendments of it as seemed to us best calculated to remove uneasiness from the minds of Her Majesty's European British subjects as to the operation of the measure, and to afford them security against failure of justice.

3. But as soon as the Government had re-assembled in Calcutta, the Honourable G. H. P. Evans, a Member of the Legislative Council, who had taken a leading part in opposing the Bill last spring, intimated to the Government that he had a further alteration of the measure to propose which might, he thought, put an end to the controversy which had so long prevailed. He still maintained that the best course would be to withdraw the Bill; but, failing that, he suggested that the sections of the Code which create the legal disqualification of Native Magistrates to try European British subjects should be removed, but that every European British subject brought before a Native Magistrate should be given the right to claim a transfer to a European Magistrate. Any suggestion coming from Mr. Evans naturally demanded the consideration of Government. It was the first proposal for a modification of the Bill which had reached the Government from an opponent of the measure, and we consequently gave to it a full and careful examination. It was decided, however, not to accept it, as it seemed to take away with one hand what it gave with the other. It gave the appearance of removing the legal disqualification, but it accompanied the removal with a right on the part of the accused person to set up the disqualification again by claiming to be tried by a Judge of his own race; it also appeared to us to be objectionable, because it admitted distinctly the principle that a European British subject had a right to refuse to be tried by a Native Magistrate or Judge; and lastly, we thought that such an option on the part of the accused would be unbecoming to the dignity of the judicial office. Under these circumstances we felt ourselves precluded from entertaining this proposal.

4. But the fact that an important Member of the Legislative Council and a decided opponent of the Bill had spontaneously come forward to recommend to the Government an arrangement which he thought might lead to a settlement of the difficulties which had arisen, at once raised the question whether

there was anything in the direction of additional security which, without sacrifice of principle, we could give to those who would be affected by the Bill, so as to allay the fears which we knew to be largely entertained, and to enable the Bill to be passed with such a degree of general acquiescence as would prevent its being made, even after it became law, the battlefield of contending parties. This was an object which it was of great importance to attain, and which now for the first time appeared to be within our reach. We entered upon the examination of this subject with an earnest desire to satisfy all that was just and reasonable in the wishes of those who objected to the measure, and to find, if possible, a mode by which we might, consistently with the policy we were determined to uphold, avail ourselves of the opening afforded by Mr. Evans' communication to bring about an arrangement which could be accepted both by ourselves and by the opponents of the Bill. The only proposal which seemed in any way to fulfil the required conditions of not being contrary to the principle of the measure, and yet such as might fairly be regarded by those who were opposed to it as giving them legitimate security, was one which had been made by the Government of Bombay in their letter of the 14th May, and under which a right to claim a jury would be given to Europeans in serious cases.

5. As your Lordship is already aware, we had had this proposal under our consideration in August last, and, though the Viceroy and the Commander-in-Chief thought that an arrangement of the kind suggested by the Bombay Government would afford a reasonable solution of the questions raised by the Bill, the majority of the Government as then constituted were of opinion, for the reasons given in our Despatch of the 10th August, that it would not be advisable to adopt such an extension of the jury system. It must be borne in mind that there was no reason to suppose that if such a proposal had been made by us, it would at that time have been accepted by the opponents of the Bill, and the Viceroy and the Commander-in-Chief therefore, though adhering to their opinion, did not think it necessary to record any dissent from the views expressed by the majority of the Government.

6. When, however, the communications made by Mr. Evans seemed to afford a hope that means might be found of allaying the existing irritation without a sacrifice of principle to which it would have been impossible for us to assent, we again took into consideration the idea of giving to European British subjects an extended right to trial by jury, and the majority of the Government came to the conclusion that such an arrangement might wisely be adopted if it would prove acceptable to the larger portion of the opponents of the Bill. Mr. Evans was therefore informed that the Government were prepared to agree in Select Committee, on the basis of the modifications approved in your Lordship's Despatch of the 8th November, to the right being given to European British subjects, when brought for trial before a District Magistrate or Sessions Judge, to claim trial by jury, such as is provided for by Section 451 of the Criminal Procedure Code, subject to the following conditions:—

- (1.) No distinction to be made between European and Native District Magistrates and Sessions Judges.
- (2.) Powers of District Magistrates under Section 446 of the Code to be extended to imprisonment for six months or fine of two thousand rupees.

Your Lordship will observe that the right to a mixed jury of the description to which we have above referred is one now possessed by European British subjects in trials before the Court of Session, and that a correlative right is conferred on Natives by Section 275 of the Code.

7. This arrangement has now been embodied in the Act, an authentic copy of which is forwarded to your Lordship with the Governor General's letter No. 3 of this date. Your Lordship will perceive that it involves no sacrifice of the declared principle of the measure, which is the removal of judicial disqualifications based merely on race distinctions. It distinctly lays down as a condition of the extended right to a jury trial that no distinction shall be made between European and Native District Magistrates and Sessions Judges. They will under the new Act be placed in all respects on the same footing. All judicial disqualifications of Native Magistrates and Judges of those grades

will be removed. Europeans will be liable to appear equally in their Courts, and will be dealt with by them exactly in the same manner. This arrangement gives no sanction to the theory that an Englishman possesses everywhere an inalienable right to be tried only before a Magistrate of his own race,—a right which is not recognized in other dominions of the British Crown, for example, neither in Ceylon nor at Hong Kong, which was distinctly negatived by the Act of 1833, and which no Government since the passing of that Act has ever been known to admit. But it is an arrangement which, as it seems to us, ought to be satisfactory to Englishmen in India, for it affords them a judicial security to which they are accustomed at home, which is peculiarly English in its character, and upon which they have been brought up to set a very high value.

8. Two main objections may be urged against this extension of the right of trial by jury in the case of European British subjects. In the first place, it may be said that it increases the special privileges of European British subjects. We are averse to any increase of special privileges of this sort, but in considering how far the new law amounts to such an increase, it must be borne in mind that the jury system already exists in India, that it is capable of extension by executive order, and that the practical effect of the extension which we have made will be very slight. Under the existing law all the High Courts try with juries in criminal cases; Sessions Courts in certain parts of the country do the same, and Local Governments have already, under the Criminal Procedure Code as it now stands (Section 269), the power of extending the jury system to any districts to which they may think fit to apply it. The amendment, while taking nothing away from the Natives, gives in practice to Europeans in jury districts little or nothing which they do not now possess. Summary cases will, as a rule, be disposed of by Justices of the Peace below the rank of District Magistrate, and the cases which will be tried by the District Magistrate himself will generally be those falling within the category of the more extended powers with which he is to be invested, and of a class which at the present time go to the Sessions Judge, so that in the great majority of cases in jury districts the European will obtain no novel right to a jury trial. Practically, therefore, in these districts the new law will leave things very much as they are, as far as regards the question of right to trial by jury, though the arrangements under which that trial will be conducted may be of a somewhat different character from the present arrangements; for the Act makes no change in regard to the jurisdiction over European British subjects now exercised by Justices of the Peace other than District Magistrates, and the attention of Local Governments will at once be called to the importance of issuing instructions with a view to the disposal by Subordinate Magistrates of petty cases to which trial by jury would be unsuitable.

9. The second objection which may be brought against the extension of jury trials in the case of Europeans is that it will lead to a further extension of the jury system generally. It was this consideration which weighed with the majority of the Council in August last, and was referred to in our Despatch of the 10th of that month. It was not thought advisable at that time to open this larger question, for we had then no reason to suppose that any extension of jury trial would be regarded by those who were opposed to the Criminal Procedure Bill as an arrangement satisfactory to them. But when it appeared from our communications with Mr. Evans that it was probable that such an arrangement would be looked upon by the European community generally as affording them a security upon which they set a high value, the undoubted advantage of a settlement of the controversy appeared to outweigh the considerations to which reference was made in our Despatch. It is no doubt probable that the extension of the jury system which the new law introduces will necessitate a careful examination of that system, as it exists in India, as a whole, and it cannot be denied that there are differences in the mode of its application in different parts of the country, which seem to rest upon no well defined principle and to call for inquiry and reconsideration. But we hold ourselves quite free to deal with the subject as we may think best after full deliberation and consultation with Local Governments. We shall hereafter communicate to your Lordship any conclusions at which we may arrive.

10. Finally, we desire to point out that the measure, as it now stands, will vindicate a principle of great value to the Natives of this country, that it will remove a disqualification very distasteful to some of the highest Native Magistrates and Judges, and that it will make a substantial, if but a limited, advance in the application of the policy of the equality of all classes of Her Majesty's Indian subjects which was laid down by Parliament in 1833, and confirmed by the Crown in 1858. It was to obtain these results in a manner calculated to give them the solid security derived from their acceptance by the general body of the European community that we consented to grant to those who will be directly affected by the change of law a safeguard specially suited to their feelings and consonant with their traditions, and we believe that in so doing we have acted wisely in the interests of all parties concerned. One side has gained a re-affirmation and extension of a great principle, which has been violently assailed and bitterly opposed, and the other has received a concession calculated to allay all that is reasonable in fears which have been widely felt.

11. We now proceed to describe in more detail the specific provisions contained in the Act. In so far as they relate to the particular matter of jurisdiction over European British subjects their effect will be as follows :—

- (a) The power of appointing Justices of the Peace will remain on its present footing ;
- (b) All District Magistrates and Sessions Judges will be *ex-officio* Justices of the Peace, and will have power to try European British subjects ;
- (c) District Magistrates will be empowered to pass upon a European British subject a sentence extending to six months' imprisonment, or two thousand rupees fine, or both, that is to say, a sentence twice as severe as they are empowered to pass at present, but any European British subject charged before a District Magistrate will have a right to require that he shall be tried by a mixed jury under Section 451 of the Code ;
- (d) A European British subject committed for trial before a Court of Sessions will have a similar right ;
- (e) Where a jury is claimed before a District Magistrate, and he sees reason to believe that a jury composed in the manner required cannot be constituted before himself, or cannot be constituted without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, he is empowered to transfer the case for trial to such other District Magistrate or such Sessions Judge as the High Court may, by general rules approved by the Local Government, or by special order, direct, and the Court to which a case is thus transferred is to try it with all convenient speed, and with the same powers and according to the same procedure as the District Magistrate from whose Court it is transferred.

12. Besides these provisions the Act as passed contains certain other provisions which apply not merely to proceedings against European British subjects but generally. The first of these is that mentioned in our Despatch of the 10th August, and in the recent debates in Council, as having been proposed by the Chief Justice of Madras. The High Court is empowered to order the transfer of a case under Section 526 of the Code whenever it appears to it that "such an order is expedient for the ends of justice," and there is a provision to the effect that, when before the commencement of the hearing notice is given to the Court before which the case is pending, that it is intended to apply for a transfer under Section 526, the Court shall exercise its powers of postponement or adjournment, so as to give a reasonable time for the application being made and an order being obtained thereon before the accused is called on for his defence, or in the case of an appeal before the hearing of the appeal.

13. Another section of the Act clears up a doubt as to the effect of Section 526 of the Code by expressly giving the High Court a power to order a commitment.

14. Another new provision will be found in Section 2 of the Act, the effect of which will be that when a Magistrate takes cognizance of an offence of his

own motion, the accused person may require that the case be transferred to another Magistrate for trial, or committed to the Court of Sessions.

15. This, it is hoped, will reduce to a certain extent the complications and dangers which it is apprehended may at times arise under the existing law from the Magistrates having to try cases in which they have collected evidence for the prosecution, and, in a certain sense, acted as prosecutors.

16. Lastly, with a view to guarding against abuses of the power of transferring cases conferred on Magistrates by Section 528 of the Code, it has been thought desirable to add a clause to that section requiring a Magistrate to record in writing his reasons for orders passed by him under it.

17. His Excellency the Commander-in-Chief is absent on military duty, but he has concurred in and fully approves of the course which has been pursued by the Government in respect to the extension of the jury system in European cases.

18. Our honourable colleague, Mr. Hope, has recorded his opinion in a separate Minute which is annexed to this Despatch, and we also enclose a Minute by His Excellency the Viceroy.

We have, &c.,
(Signed) RIPON.
J. GIBBS.
T. F. WILSON.
S. C. BAYLEY.
C. P. ILBERT.
T. C. HOPE.
A. COLVIN.

No. 24.

•MINUTE by THE HONOURABLE T. C. HOPE, dated 24th January 1884.

BEING unable to approve of the Act which has been passed, or, consequently, to concur in this Despatch, I am obliged to record the following observations.

2. When the discussion regarding the position of Native members of the Convenanted Civil Service in respect of criminal jurisdiction over European British subjects outside the Presidency towns first came before me in September 1882, the question appeared to me to be one of degree, rather than of principle. The principle laid down in the Charter of 1833 and the statute of 1853 is that no Native of India shall, as such, be disabled from holding any office under Government. The interpretation continuously put upon these enactments by the Court of Directors in 1834, by Her Majesty's Proclamation in 1858, and by Secretaries of State and Indian Governments subsequently, had been that they were to be brought into force "as far as may be,"* and "as freely and extensively as a regard for the due discharge of the functions attached to "places of trust will permit."† In short, "fitness is henceforth to be the "criterion of eligibility."† Upon this principle, thus tempered in application, the Government had continuously proceeded. Europeans, originally amenable only to the King's Courts (from the time they were established), were gradually made amenable (a) to British District Magistrates and Sessions Judges for graver offences, subject to certain limits, and (b) to Native Magistrates in Presidency towns within certain limits, and to Native High Court Judges, as also to process (returnable before a competent Court) by a Native Magistrate of any grade, without any limit whatever. The question thus was simply whether it was expedient to make any further advance in the previous direction. Though regretting that the question had been raised quite so soon, I foresaw that we could not long logically resist the demand to place on a more equal footing in the matter in question Europeans and Natives whom we had admitted to the same Service, and I considered it more politic in a Government to make a

* Her Majesty's Proclamation of 1st November 1858.

† Court of Directors' Despatch, 10th November 1834.

reasonable concession in time, before any strong administrative inconvenience had arisen, than to run the risk of being forced later on by popular agitation to make one which might possibly be larger than was desirable. Absolute equality, irrespective of age and individual capacity, being obviously impossible, the attainment of the high offices of District Magistrate or Sessions Judge seemed to be the best line at which to remove the disqualification of Native Civilians to deal criminally with Europeans, though I was prepared, if it were deemed absolutely necessary, to concede the powers to approved personal fitness, combined with seven years' standing in the Service. I considered that a moderate measure of this kind would probably not meet with any formidable opposition, provided it were introduced at an opportune time and after due preparation of the public mind.

3. The Bill of February 1883 was not introduced in the manner I contemplated, and went a good deal farther than I approved, not merely in the removal of disqualification of Natives, but by disqualifying a large class of official and non-official Europeans from exercising jurisdiction over their countrymen. When this raised a storm of opposition on the part of Europeans, which appeared likely to be met by counterblasts of Native feeling, I advocated the withdrawal of the Bill, as preferable to allowing race antipathies to be deeply stirred during the period of nearly nine months which must necessarily elapse before the Legislative Council could deal further with the question. This course I considered the Government could adopt without discredit, by boldly stating that they had not anticipated that a measure right and desirable in itself would have been so received, but that they deemed the evils of race embitterment to be greater than the advantages to be obtained by enacting it.

4. When the receipt of the replies to the reference to local authorities made it clear that the bulk of official opinion throughout India was adverse to the Bill as introduced, and recommended either material modification or withdrawal, the political position of the Government appeared to me to have entirely changed. From being merely the parent of a measure to which grave exception was taken, it had become the arbiter in a bitter controversy regarding race privileges and disqualifications between the Europeans and Natives, who make up the total of Her Majesty's subjects in India. In this new position it seemed to me to be the duty of the Government, laying aside any predilections which it might entertain for its own measure, to make an award such as, while fully meeting all administrative needs and reasonable claims for the present and the near future, would go no farther, and would not inflame the passions, or prolong the conflict, by giving either party a victory over the other. The limitation of the extension of jurisdiction of Native officials over Europeans to such individuals as had attained the position of District Magistrate or Sessions Judge, which was recommended in our Despatch to the Secretary of State, No. 35 (Legislative), of 10th August 1883, appeared to me to fulfil these conditions, and I therefore readily concurred in it. To the amendment of Section 526 of the Criminal Procedure Code, also then proposed, I assented somewhat reluctantly, in consideration of its intrinsic merits, though I thought a general amendment of the kind out of place in a special measure such as was in question.

5. The modifications of 10th August, having been approved by the Secretary of State, were announced in the Legislative Council on 7th December, but the Bill was not proceeded with on those lines. I much regretted this, and did not see anything in either the modified Bill itself, or in the state of public feeling in Calcutta in the month of December, which necessitated a further change. I thought that the reasonableness and advantages of the modified Bill, if clearly insisted on, would at least have tempered opposition into acquiescence.

6. To the Act which has been passed, the first objection is, that the extension of the jury system in India is a retrograde measure. In England, the jury system is still clung to by the large body of the people, chiefly because it is an ancient and especially English institution, and with its enjoyment, as hitherto, by Englishmen in India I would not interfere, as long as they themselves appreciate it. But whether it affords, as compared with the system of trial by a single Judge, any more efficient administration of justice may well be questioned. In England, at any rate, there appears no disposition to extend it,

but rather a disposition to extend the power of summary trial. In India, the weight of authority, whenever its extension has been proposed to the Local Governments, has always been opposed to such a step. For proof that the jury system fails when questions of race, politics, or religion are involved, we need not look farther than the United Kingdom. A large proportion of the cases in which Europeans in India are concerned fall within this category. In many of the rural districts of India, too, the number of Europeans is so small, that the materials for an independent mixed jury hardly exist, as far as they are concerned.

7. Another objection is, that this extension involves, in order to avoid the new race disqualification which would attend the claiming of trial by jury only in cases in which the District Magistrate or Sessions Judge was a Native, the depriving District Magistrates of their present powers of trial without a jury, powers which have hitherto been exercised successfully, and which will continue to be exercised by their own European subordinates who are Justices of the Peace. This deprivation and anomaly are but lightly veiled by the increase of the District Magistrate's powers from three to six months and double fine, an increase so small as to make no practical difference in the class of cases to be tried by the two.

8. A third objection consists in the administrative inconvenience attending the application of the jury system. The cases which it will now reach are mostly so petty that they would not be tried under the system even in England. The circumstances of Indian Government and society are such that at one time a District Magistrate may be seriously hindered in some of his other numerous important duties by having to conduct, and adapt his engagements to, a jury trial; at another, a Native prosecutor and witnesses may be put to great trouble, loss of time, and expense by transfer to a new Court or District.

9. A fourth objection, and not the least in importance, is that this extension of the jury system in favour of Europeans even in non-jury districts may prove very embarrassing hereafter, inasmuch as it will give a colour to demands for a similar privilege on the part of Natives, which will be pressed with ability and persistence, and will not be easily resisted, especially if it be admitted that there is any greater judicial security in the jury system. The amendment moved by the Maharaja of Darbhanga at the final debate is a forewarning of the demands I have in view. They will be the more serious in that the plea cannot be urged for them, as it has been for the Act now passed, that the number of cases affected will be inconsiderable. The present Act, therefore, offers no promise of being a settlement of the questions which have been raised, or a pacification of the feelings which have been excited, by the introduction of the measure.

10. Regarding Sections 2 and 3 of the Act, I have only to remark that they are alterations in the Criminal Procedure Code unconnected with the original purpose of the whole measure, supported by no evidence that they are called for, and not deemed necessary at the time of the enactment of the revised Code which came into force last year. I do not anticipate that they will have the effect of quieting those who are likely to prefer the demands to which I have above alluded.

11. Considering that the Act will thus, in my opinion, extend a mode of procedure unsatisfactory in India, reduce the District Magistrates' powers of independent trial, thus disarranging the mechanism of our Criminal Procedure Code, which has been perfected with skill and justified by experience, cause various administrative inconveniences, and lead to demands for further undesirable changes, which it will be difficult to resist, I think that the withdrawal of the whole measure would have been preferable to its enactment in its present form.

T. C. HOPE.

24th January 1884.

No. 25.

MINUTE by the GOVERNOR GENERAL of INDIA, dated 26th January
1884.

1. I have only a few observations to make upon the Minute of my honourable colleague, Mr. Hope.

2. In examining the objections which are urged in Mr. Hope's Minute against the extension of jury trials in European cases established by the Act which has just been passed, and which are contained in the 7th, 8th, and 9th paragraphs of that Minute, I would, in the first place, remark that in most parts of India District Magistrates rarely try cases themselves, this class of duties being habitually performed by their subordinates. The practice varies somewhat in different provinces, but the cases of any kind now tried by District Magistrates are everywhere few, and the European cases so few as to be scarcely worth considering for any practical purposes. Speaking of Bengal, the Lieutenant Governor said in his speech of the 7th instant, that "in 1882, of the whole of the criminal cases in Bengal which came under trial 99·3 per cent. were tried by the Joint Magistrates and their subordinate officers, and that 7 per cent. represented the number of cases and work of a criminal character which the Magistrate and Collector of the district has himself to try. If that represents all the criminal work, what decimal would represent all that class of cases in which European British subjects were concerned which would come before the Collector and Magistrate of a district." The objection, therefore, that the Act will reduce the district Magistrates' powers of what Mr. Hope describes as "independent trial" is more theoretical than practical, and as a matter of fact, the probability is that Magistrates of that rank will, under their extended powers, try by consent more European cases than they now do. Whether this will be so or not, experience only can prove, but it is a conjecture at least as probable as the opposite hypothesis put forward by Mr. Hope. When my honourable colleague describes the provision of the Act under which District Magistrates are to try European cases with a jury as a "deprivation" and treats it as an "anomaly" that their European subordinates, who are Justices of the Peace, should continue to try cases without a jury, he seems to me to write under the influence of an idea that some slur is cast upon a judicial officer if he is required to try criminal cases with a jury. This idea appears to me to be entirely erroneous, and it is only necessary to point to the fact that both in England and in India, and so far as I know wherever any system of trial by jury exists, it is the Magistrates of the higher grades who try with juries, while lower Magistrates with more restricted powers try without them. The present arrangement, therefore, appears to me to involve neither deprivation nor anomaly.

3. In the 8th paragraph of his Minute Mr. Hope dwells on the administrative inconvenience likely, in his opinion, to result from the proposed application of the jury system. Bearing in mind how very few the number of cases to which the new arrangement will apply are likely to be, the powers given by the Act to the High Courts to lay down rules for transfer with the approval of the Local Governments and the section enabling a Sessions Judge to sit *ad hoc* as a District Magistrate will remove the objections as to inconvenience to District Magistrates urged by Mr. Hope. With respect to inconvenience to prosecutors and witnesses, a matter doubtless of great importance, it must be borne in mind that, under the law as it stood before the passing of the present Act, all European cases requiring a punishment beyond three months' imprisonment had to be transferred to the Sessions Court. The only European cases which District Magistrates will, as a rule, now take up are those to which his newly-extended powers are applicable, so that if every one of them had to be transferred, which is highly improbable, the transfer would produce no more inconvenience to suitors than has occurred under the practice which has existed ever since the Criminal Procedure Code of 1872 was passed; whereas if the District Magistrate tries the case by consent without a jury, or if he is able to convene a jury when it is claimed, there will be in future in regard to the class of cases now brought under his jurisdiction no such transfer as would have been necessary under the previous law.

4. It is obvious from the 6th paragraph of Mr. Hope's Minute that he regards the institution of juries with disfavour, and it is therefore most natural that he should object to any extension of the jury system, but I will not touch now upon the argument advanced in the 9th paragraph, as it is dealt with in the body of the present Despatch.

5. Mr. Hope concludes his Minute by saying that he thinks "that the withdrawal of the whole measure would have been preferable to its enactment in its present form." It is not at all surprising that he should entertain this opinion. As he has stated in his 3rd paragraph, he advocated the withdrawal of the Bill last March, just after the public meeting, of which a report accompanied the Despatch of the Government of India of the 16th August 1883, had been held in the Calcutta Town Hall, and at a time when advice, which General Wilson, although opposed to the Bill, characterized as "miserable and pernicious," was being given to the volunteers to resign *en masse* if the Bill was not withdrawn, and when other proceedings which called down a still sterner rebuke from the Commander-in-Chief were taking place. If Mr. Hope then advised the withdrawal of the Bill, it is only consistent that he should have preferred its withdrawal now to the enactment of provisions which are directly opposed to the opinions which he long held and publicly advocated with his usual ability on the subject of trial by jury.

6. For my own part I adhere to the views expressed in the 3rd and 4th paragraphs of the Despatch of the 10th August, and hold that it was the duty of the Government "not to abandon the principles upon which this measure and the long series of measures which have preceded it are founded." The question which the Government had to consider last December was whether it was better to admit the further change in the Bill involved in the proposed extension of jury trial, and thereby put an end to a mischievous agitation or to refuse all modifications beyond those announced by the Viceroy on his arrival at Calcutta. There was much to be said for the adoption of the latter course, but the grave evils of a prolonged agitation, carried on after the Bill was passed, and making every European case tried before a Native Judge or Magistrate the occasion of an outburst of race antagonism, induced the majority of the Members of the Executive Council to think that, provided the principle of the Bill was firmly maintained and Native and European Sessions Judges and District Magistrates were placed on a footing of perfect equality, the immediate concession to Europeans of a jury trial in certain cases in districts in which the jury system has not yet been generally established was a security which might fairly be granted to persons who have been accustomed to enjoy it at home, and who have been brought up to set the highest value upon it.

RIPON.

26th January 1884.

EAST INDIA (JURISDICTION OF NATIVES OF
EUROPEAN BRITISH SUBJECTS).

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IN CONTINUATION OF PAPER [C. 3877].

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